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account of the capital cost of the railway should be deferred until the Protectorate could dispense with an Imperial grant-in-aid.

6. In paragraph 20 of the second report of the Public Accounts Committee, 1924, (House of Commons 136) reference is made to the capital cost of construction of the original Uganda Railway. The Committee wished to be assured that "it is formally recognised to be beyond the possibility of question that the Colony is indebted to His Majesty's Government in respect of the sum originally expended on the Railway, which is obviously one of its most valuable assets". (At this time, the finances of the Railway were separate from those of the Colony, this separation having been effected in April, 1921. Particular attention is directed to the words "that the Colony is indebted to His Majesty's Government" in the above quotation).

7. It was stated at this time that the matter had remained in abeyance for many years, and that it had not been taken up when in 1913 the Treasury agreed to the East Africa Protectorate being released from their financial control.

It did, however, come under review in the discussions with the Treasury relating to, first, the Kenya loan of £5,000,000 raised in the open market in November, 1921, and, later, the assisted loan voted by Parliament early in 1924 for the development of communications in Kenya and Uganda.

8. In 1921, as a result of a discussion between the Secretary of State for the Colonies and the Permanent Secretary of the Treasury, a memorandum was prepared dealing with various points which had to be settled before the approval of the Treasury could be obtained to the £5,000,000 loan being admitted under the Colonial Stock Acts, and, on the particular question of the capital cost of the original railway, it was laid down that :-

"It is recognised that the stipulation originally made in connection with the Uganda Railway that the net revenue from the railway should be paid into the Imperial Exchequer until the advances therefrom for the construction of the railway had been repaid in full and thereafter until otherwise determined has not been abrogated. The Treasury agree however that for the present the Railway revenue should continue to be applied towards the general expenses (including development) of the Colony, without prejudice to any future decision which may be arrived at as to the application of such revenue towards repayment of the cost of the railway, or otherwise."

NOTE: It should be noted that the original stipulation provided for the net income from the zone of land to be paid into the Imperial Exchequer in reimbursement of the original cost of the Railway, and not the net revenue from the railway as stated above.

9. In 1921, it was decided that the finances of the railway must be separated entirely from those of the Colony and that surplus earnings must be devoted in the first instance to debt charges on loans raised and to provision for renewals and betterment, and, subject to these services, to the reduction of rates as far as possible, the line being regarded as one for development and not for making profits. This separation was effected in April, 1921, and it should be noted that the land was retained and is at present held by the Government of Kenya.

10. It was part of the arrangement with the Treasury in 1921 that at a later date a further loan should be raised to cover services not included in or not sufficiently provided for under the 1921 loan. At the end of 1923, the Treasury agreed to parliamentary approval being asked for the assisted loan of £2,500,000, and on the conclusion of the arrangements in regard to this assisted loan, the Treasury again placed on record that the net revenue of the Uganda Railway was due to the Exchequer, but agreed that for the next ten years the net revenue might be applied to railway purposes, and that in the

meantime no interest would be charged on the capital debt for advances under the Uganda Railway Acts.

11. In April, 1925, the Secretary of State for the Colonies in a letter to the Lords Commissioners of the Treasury stated "If therefore, Their Lordships concur, I am to suggest that it will be sufficient to inform the Public Accounts Committee that :-

- (1) the liability is admitted;
- (2) the question of repayment is postponed till 1934, it being understood that interest on the capital amount will not accrue up to that date; and
- (3) the terms on which repayment is to be made are left over for the consideration by His Majesty's Government when the time comes."

and this was noted by the Lords Commissioners of the Treasury.

12. In 1933 the Lords Commissioners of the Treasury stated :-

"The Secretary of State is of opinion and Their Lordships agree, that in the prevailing financial and economic conditions of the British territories in East Africa it would be impracticable for the Governments concerned to undertake at the present time the service of the various liabilities mentioned above" ((b) of which reads, the sums due to the Exchequer in refund of the capital sums advanced under the Uganda Railway Acts 1895-1902).

In these circumstances My Lords agree that in all the above-mentioned cases the question of terms should be further postponed until 1938".

13. The foregoing is a brief summary of the events leading up to the present consideration of the re-imbusement of the cost of the construction of the original Uganda Railway from Mombasa to Kisumu.

14. Although it had been stipulated (see paragraphs 8 and 10 above) that the net revenue of the railway was due to the Imperial Exchequer, the Administration was not aware of this particular stipulation until 1929, nor has this stipulation yet been made effective. In this connection it will be observed

that, while the final report of the Uganda Railway Committee (containing the original arrangements, whereby all profits derived from the zone of land (after a percentage deduction for management) were to be remitted to His Majesty's Treasury to be credited to the capital account of the railway), was presented to both Houses of Parliament in July, 1904, when the question of liability was raised by the Public Accounts Committee in 1924 it was stated that "the terms on which repayment is to be made are left over for the consideration by His Majesty's Government when the time comes".

15. The particular wording of the various admissions of liability would indicate that it was not desired to prejudice the full consideration of the question of re-imbusement when the time arrived.

16. Although the agreement arrived at between the Colonial Office and the Imperial Treasury in regard to the net revenue of the railway does not appear to have been placed before Parliament, it is not desired to consider whether this particular agreement could abrogate the conditions originally laid down, but rather that since none of the stipulations made from time to time have in fact been given effect to, it is not unreasonable to review afresh the original arrangements made for the ultimate refund of the original cost of the railway.

17. The two mile zone of land set aside in 1897 for the refund of the cost of the railway was reserved as a railway asset, the intention being that as the railway rendered development of this land practicable the appreciation in land values would secure redemption of the original cost of the railway.

18. In 1902, this zone of land and the liability for the repayment of the original grants was transferred from the

reference to the Commissioner of the East Africa Protectorate and reference to the Final Report of the Uganda Railway Committee shows that the zone of land "was made over to the Commissioner on condition that the profits derived from the zone, whether from rents, timber, leases, or sales, or otherwise, after a percentage deduction for management, to be hereafter determined, should be remitted to His Majesty's Treasury to be credited to the capital account of the railway" thus reducing the amount outstanding in the Treasury books.

19. It will be observed that the transfer of the land, which was a railway asset, to the Commissioner of the East Africa Protectorate (now Kenya), was conditional, and while the Imperial Treasury may have suspended the condition with regard to the payment of profits derived from the zone, it can in no way release the Government of Kenya from its liability on this account, nor can any liability in respect thereof be transferred to the railway without the re-transfer to the railway of the two mile zone of land.

20. It is on these grounds mainly that the Administration, notwithstanding Article 19 of the Orders-in-Council, 1925, which provides :-

"The Railway and Harbour Fund shall be liable for all loans including all charges connected therewith advanced by His Majesty's Government and raised or borrowed or to be raised or borrowed by the Government of Kenya or the Government of Uganda or by both Governments jointly for the purposes of the Services and expended for those Services. The High Commissioner shall pay out to the Treasurer of Kenya or Uganda, as the case may be, such interest and sinking fund contributions as may be required to meet the obligations of the Fund to His Majesty's Government or of Kenya or Uganda under the Ordinance raising the loan "

disclaims any liability (either partial or total) for the

- 8 -

re-imbusement of the original sums authorised by the Imperial Government under the Uganda Rail Way Acts, 1896 and 1902, and while the Government of Kenya may contest the position it is the natural corollary to the acceptance and retention by it of (a) the land reserved for the ultimate refund of the cost of the railway and (b) the income derived therefrom.

21. For consideration by Council.

No. E.F. 571.

General Manager's Office,

Nairobi.

10th May, 1939.

KENYA

DOWNING STREET,
22nd February, 1938.CONFIDENTIAL.

Sir,

I have the honour to refer to Sir Joseph Byrne's Confidential despatch No. 112 of the 13th October, 1936, on the question of the repayment of the £5,500,000 provided by His Majesty's Government towards the capital cost of the Kenya and Uganda Railway.

2. As you are aware, this question is to come up for review this year: and the Lords Commissioners of the Treasury have recently requested that the matter may be brought under consideration forthwith. It will be necessary for Parliament to be informed in the course of the year of whatever conclusion is reached.

3. In his despatch under reference Sir Joseph Byrne indicated the readiness of the Kenya Government to present its case for the remission of the claim in greater detail should it be requested to do so in connection with the review of the matter which must now be undertaken. I should therefore be obliged if you could supply me with a memorandum setting out, from the standpoint of the Kenya Government, the case for remission, together with any observations which you may wish to offer. The earlier political history was set out in Sir Alan Pim's Report and in the memorandum of which a copy was enclosed in Sir Joseph Byrne's despatch under reference; and it will not be necessary for those aspects to be re-stated in the memorandum unless you think it desirable for any of the historical arguments to be further elaborated. I would observe, with respect to paragraph 17 of the memorandum forwarded by Sir Joseph Byrne, that I fear that it would not be possible to sustain the argument that "it is no more logical for the Imperial Government to demand repayment of the original grants for the Railway than it would be to demand repayment of the Grants-in-Aid." The "admission" of the Treasury concerned only the period when the East African Protectorate was dependent on the Home Government.

4. It would be of assistance if, either in your covering despatch or in the memorandum you could include comment on the following matters:-

- (1) If it is decided that some payment should be made to the Imperial Treasury, should any portion of the liability fall upon Kenya Government funds as distinct from those of the Railway Administration? If so, what steps would you suggest should be taken to apportion the liability?
- (2) Assuming, purely for the sake of argument and example, that a compromise was decided upon under which a liability for the repayment of, say £3,000,000 fell upon the Railway Administration or upon the Kenya Government and the Railway

GOVERNOR

AIR CHIEF MARSHAL,

SIR ROBERT BROOKE-POPHAM,

G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.

Administration /

administration jointly, what arrangements would you suggest should be made for meeting and eventually extinguishing that liability ?

(iii) What would be the financial effect upon the Government of Kenya or upon the Railway if it was decided that such a liability should be assumed ? How, for example, would the general financial policy of the Railway be affected in respect of the maintenance of the funds for renewals and betterment and of the general reserve ?

(iv) The liability for the repayment to His Majesty's Government of the £5,000,000 was definitely recognised in 1925. That admission of the liability remains. But my view of the matter on the broad political plane has now to take into account the published recommendation in paragraphs 402 and 403 of Sir Alan Pim's Report that remission should be favourably considered. To what extent do you consider that the situation has been affected by that recommendation ? What, in your opinion, would be the political effect in Kenya at present of a settlement under which some measure of repayment either by the Railway or by the Kenya Government or by both was decided upon?

5. I wish to make it clear that I put the above questions simply in order to clarify the situation and to assist you in preparing material, and that I have no wish in any way to limit your freedom of comment. Pending the receipt of your observations I shall keep an open mind on the subject. I am anxious to achieve a settlement which will take full account of the necessities of Kenya and the Railway. But in view of the heavy burdens at present borne by the Imperial Exchequer you will appreciate the difficulty inherent in proposals for remission of the liability.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

(signed) W. Ormsby Gore.

Administration jointly, what arrangements would you suggest should be made for meeting and eventually extinguishing that liability?

- (iii) What would be the financial effect upon the Government of Kenya or upon the Railway if it was decided that such a liability should be assumed? Now, for example, would the general financial policy of the Railway be affected in respect of the maintenance of the funds for renewals and betterment and of the general reserve?
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I have the honour to be,
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Your most obedient,
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(signed) W. Ormsby Gore.

TREASURY MEMORANDUM

PARLIAMENTARY GRANT FOR THE CONSTRUCTION OF

THE UGANDA RAILWAY

This memorandum is based on the following assumptions -

- (a) That the sum claimed by His Majesty's Treasury on account of the original construction of the Uganda Railway is £5,500,000.
- (b) That liability for the repayment of this amount has been admitted.
- (c) That the apportionment of the liability as between the funds of the Kenya and Uganda Railways and Harbours and those of Kenya Colony remains to be decided.
- (d) That no claim has been made, or at any time admitted, for interest on the debt or on any part of it.

2. With regard to (c), it is contended by the General Manager that no part of the liability should properly be assigned to Railway funds. The grounds for this contention are twofold. One is that repayment of the cost of construction was originally secured on the stretch of land bordering the Railway and extending to a depth of one mile on either side and that the fact that this arrangement was subsequently departed from for convenience of administration should not be used to the detriment of the present body of Railway users. The General Manager suggests that the area of land involved, namely 700,000 acres, could reasonably be valued at £5 per acre and that as this land has reverted to Kenya it follows that liability in respect of it should be assumed by the Kenya Government to the extent of £3,500,000. It is further claimed by the General Manager that the sum of £1,682,552 was taken by the Kenya Government from Railway revenue prior to 1921

and/

and that this sum also should be set against the claim and thus practically extinguish it so far as the Railways are concerned.

3. It must be expected, that arguments on these lines, will receive strong support in Uganda.

4 With regard to the first contention it is plain that any adjustment of liability which could be sustained on this account would not be based on a valuation of the land but on the income which the Kenya Government has, in fact derived from it, and against this income would need to be set the expenses of land management, survey and so forth. It would be impossible to arrive at an accurate figure and it would be a matter of great difficulty to assess any figure at all. The original arrangement was abandoned some thirty-two years ago and it seems quite impracticable to resuscitate it now. The question was not raised in connection with Article 19 of the 1925 Order-in-Council.

5. When the land basis was abandoned the Imperial Government's claim was transferred against the net revenue of the Railways and there is force in the argument that some portion of the claim should properly fall against Kenya funds in view of the revenue assistance received in the past from Railway profits. The figure of £1,682,552 is taken from paragraph 189 of General Hammond's report but it can be stated at once that the Kenya Treasury does not accept this figure as representing the true gain derived from the Railways. It would be extremely difficult, at this stage, to arrive at an accurate figure. Mr. Amery informed the Government of Uganda in a confidential despatch of the 27th of August, 1925, that it would be quite impracticable to make any adjustment in this matter. It could, no doubt, be argued that the assets created by the original expenditure (or such as still survive) are now the property of the Railway, that the Railway users are therefore the proper people

to pay for them, that liability was imposed on the Railways and Harbours Fund by order in Council and that it is now impracticable to reopen matters closed in 1925. Neither the Railway Administration nor the Uganda Government are likely to accept this view, and it would be difficult to contend that a figure cannot be arrived at by recalculation. The matter is one in which the interests of the taxpayers of Kenya are in conflict with those of Railway users as a whole and this conflict could not be resolved satisfactorily by a negotiated agreement with an independent Enquiry. It is unlikely that the claim against Kenya in this account, if it is made, would be reduced below £1,000,000 unless account is to be taken of the admission of Railway materials free of import duty.

4. With regard to (d), the fact that no claim to interest has been made or admitted, and presumably will not be made or admitted in respect of any balance of the claim which may be outstanding at any time, has a bearing on the method of repayment if repayment is to be effected.

There appear to be three possible methods of effecting repayment :-

- (a) To include annual provision in the budget of the Railway and presumably also in the budget of the Colony;
- (b) To repay, so far as the Railway is concerned, from such sums as may be available in the net revenue account from time to time;
- and
- (c) To effect settlement by a lump sum payment.

In order to adopt (a) it would presumably be necessary to amend Section 13 of the Kenya and Uganda Railway Ordinance, 1927, which reads as follows :-

"13. The Services shall be administered on business principles, due regard being had to agricultural and industrial /

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"industrial development in Kenya and Uganda by means of
"cheap transport. So far as may be, subject to such
"provisions as may be considered necessary to meet contin-
"gencies, the total earnings of the Services shall not be
"more than sufficient to meet:-

"(a) The necessary outlays for working and maintenance;

"(b) Contributions to reserves funds for renewals,
betterments, stores and other purposes proper to
the Services;

"(c) Interest and sinking fund charges due on capital
not being capital contributed out of railway or
harbour revenue;

"(d) Such costs, compensation or damages as may be
awarded against the High Commissioner."

8. It is true that the Order-in-Council provided for
this debt to be met from the Railways and Harbours Fund but
as Section 13 of the Ordinance now reads it seems doubtful
whether provision could properly be made in the Railway
Budget for repayment of the claim. Such repayment could
hardly be regarded as a "sinking fund charge". It is
clear, moreover, that if the provision required by the
Ordinance for the existing commitments of the Railways is
to be covered with safety it would only be possible to
assume a further fixed annual charge on the Railway budget
of so limited an amount as would spread the repayment of
several millions of money over a long period of time.
Provided that the annual provision on this account could be
agreed at a sufficiently favourable figure, a fixed annual
payment would be the most satisfactory form of settlement
as it would allow the principle of Section 13 of the Ordinance
to continue to be applied; that is to say, rate
reductions would not be ruled out although they would be
diminished.

9. Method (b) is apparently the one contemplated by

His /

His Majesty's Treasury. It was suggested in 1904 that one-half of the balance of the net revenue account should be paid to the Exchequer. It must be pointed out, however, that if the terms of Section 13 of the Ordinance are complied with there will be no balance in the net revenue account available for this purpose and the time may well arrive - and may arrive very shortly - when no fortuitous surplus is available after the commitments laid down in the Ordinance have been met. The interests of the Exchequer under this arrangement could only be protected by prescribing that there is to be no reduction in rates until the claim has been settled or by placing some other restriction on the voluntary reduction of net earnings. Any such restriction is open to serious objection. A settlement would be bound, at the least, to be spread over a considerable period. To bring under annual review the amount to be applied in liquidation of a claim which the Railway Council and the Legislature are unlikely to recognise as an equitable one is to invite frequent efforts to evade or postpone payment and to create a constant source of friction and embarrassment. Such an arrangement is also open to objection from the point of view of financial administration since the fact that one-half of any surplus would be lost to the Railway Council would be a constant consideration in their minds, and in view of their considerable financial power with regard to unbudgeted expenditure, this position would lead to extravagance.

10. Any proposal for repayment by annual instalments must face the dilemma that the amount is either as large as to reduce below a safe and reasonable margin the Railway's provision for depreciation, renewals and reserves, or so small as to spread repayment over a very long period.

11. With regard to (c), a lump sum settlement could only /

only be made by borrowing for the purpose on long term loan and any such addition to the capital commitments either of the Railway or of the Colony is open to obvious financial objection at the present time.

It. Whatever method of repayment may be considered it is clear that very strong local opposition will be aroused. Public objection may be expected to rely upon, and to use with effect, the observations made in this matter by Sir Alan Pim in his published report. It will be contended that the original construction of the Railways was undertaken by the Imperial Government for other than commercial considerations and that, in so far as commercial and financial considerations did enter into the matter, the results of the British taxpayers' enterprise have been highly successful from their point of view. There is nothing unusual in a Government subsidy to establish new communications and not only has economic development resulted in this case, which must in the aggregate have been of immense value to the trade of the United Kingdom, but the Railway itself has built up a large structure on the foundations provided by the Exchequer advance. Since 1921 over £14,000,000 of interest bearing and repayable loans have been raised for the system in the United Kingdom. It is estimated that at least one-half of the Railways' loan expenditure is incurred in the United Kingdom and in addition the Railways have expended in the United Kingdom over £16,000,000 from revenue since 1921 including £7,350,000 on account of interest payments. It must be remembered that the Imperial Exchequer has received income tax at full rate on these interest payments, an advantage which would not have accrued had railway development in Kenya been carried out on the lines which have obtained in certain other African Colonies. It will be the public contention /

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contention, in short, that the sacrifices which the British taxpayer made in providing the original line have been repaid indirectly from the resulting development and that if further development (with further advantages to British trade) is not to be retarded the Railway system, and the territories which it serves, are not in a position to bear additional capital charges under present conditions.

13. It is certainly the case that this would be a most unfortunate time at which to add to those charges. The principal export tonnages on which the prosperity of the Railway depends are cotton, sisal and coffee and all these commodities have been subject to a steep fall in price during recent months. The following are comparative figures :-

| | | 1939 February | 1937 February |
|--------|----------|------------------|------------------|
| Cotton | per lb. | 5.17d. | 7.40d. |
| Sisal | per ton | £18.16.0 | £28.17.6 |
| Coffee | per cwt. | £ 2.19.9 | £ 5 9.0 |

It has been necessary to reduce railway charges on coffee this year as an emergency measure.

14. It is true that the Railways have had three prosperous years but they have not yet built up reserves to a figure which can be regarded as adequate to meet the revenue fluctuations which past experience shows to be probable in the future and it is strongly urged that the time has not yet arrived for the question of indebtedness to the Imperial Treasury to receive final consideration. The debt charges of the Railway and of the Colony, as they at present stand, remain high in relation to their revenues and any immediate addition to either would involve regrettable consequences - financial, economic and political - which seem out of proportion to the proceeds which enforcement of the claim would be likely to yield in the near future.

The Treasury, Nairobi.
18th April, 1938.

THE SECRETARIAT,

NAIROBI.

5th May, 1938.

No. S/B/RLY.10/1.II/32.

CONFIDENTIAL

Sir,

I have the honour to refer to a Confidential letter, No. E.F.571 of the 21st March, from the General Manager of the Kenya and Uganda Railways and Harbours Administration on the question of the repayment of the sum of £5,500,000 provided by His Majesty's Government towards the capital cost of the Kenya and Uganda Railway. A copy of the Secretary of State's Confidential despatch of the 22nd February, which is discussed in the General Manager's letter, is enclosed for ease of reference.

2. I now transmit, for your information, a copy of a Confidential letter No. C/38/3/1/48 of the 19th April, from the Treasurer, with which is enclosed a memorandum on the subject prepared by him, with the terms of which this Government is in agreement.

3. I am to request that this letter may be laid before His Excellency the High Commissioner for consideration, who will no doubt desire to consult the Railway Advisory Council in the matter.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) H.L.G. Gurney

for COLONIAL SECRETARY

THE SECRETARY
TO THE HIGH COMMISSIONER FOR TRANSPORT,
NAIROBI.

ORIGINAL COST OF THE RAILWAY

Will Kenya Be Asked To Pay The Bill?

£5,550,000

"Negotiations are in progress and nothing further can be said at the moment" was the official reply given to the "East African Standard" yesterday following enquiries as to whether it was correct that the Imperial Government had raised the question of the responsibility for the grant of two and a half million pounds, the original capital cost of the Uganda Railway.

The money, it will be recalled was issued by the British Treasury in London under the authority of the Uganda Railway Acts of 1896, 1900 and 1902 to a total of £5,550,000. Although the Acts themselves did not specify repayment by the Colony or the Railway of the original on any date the question of repayment has arisen from time to time and when it was last raised in 1933 it was deferred for consideration in 1938.

On one occasion, in 1924, the Public Accounts Committee of the House of Commons stated in its Report that it wished to be assured that it was formally recognised to be beyond the possibility of question that the Colony was indebted to His Majesty's Government in respect of the sum originally expended on the Railway.

The Loan has never borne interest.

Sir Alan Pim referred to the history of the demand for the repayment of the original capital cost of the Railway in his report on Kenya published two years ago. He wrote:

"After the British activities in Uganda from 1888 onwards which followed on the request of the Sultan of the Mahdi, the British Government decided to abandon that country. This decision was reversed as the result of a popular protest against the abandonment of long established territory, and because of our obligations to Egypt in regard to the Nile reservoirs in the great lakes. The first alternative adopted was the declaration of a sphere of influence, but this at once came into conflict with the traditional anti-slavery policy of England as Uganda was one of the main centres of that trade.

The adoption of a policy of effective occupation was ultimately found to be unworkable and the construction of a railway connecting the Coast with Victoria Nyasias was recognised to be essential for carrying out the latter policy. The approval of the project made it necessary to commence the work without adequate preliminary surveys and without any estimates of the commercial prospects of the line. On June 3, 1894 a motion was introduced in the House of Commons approving of the provision of the necessary preliminary expenditure from the Consolidated Fund. On July 2 this was followed by the introduction of a Bill for the construction of the Railway and for the issue out of the Consolidated Fund of any sums not exceeding three million pounds for that purpose. The Treasury was authorised to borrow by means of terminable annuities to be charged to money provided for Foreign and Colonial Services, or if these proved insufficient, out of a Consolidated Fund."

Repayment of Original Loan

After referring to the severe criticisms with which the proposals were received Sir Alan Pim continued: "This historical survey may seem out of place in a report of this character but it appears to be necessary in order to show the circumstances which led to the construction of the railway and the considerations which influenced the British Government at that time. The commercial prospects of the line or the possibility of developing what is now Kenya Colony, played practically no part in those considerations. The possibility of increased trade with Uganda was mentioned and it has to be remembered that up to a considerably later date Uganda included a considerable proportion of what are now the Highlands of Kenya. The ultimate total cost of the Railway was £5,502,500. This sum was borrowed from His Majesty's Government from the National Debt Commissioners. It was to be repaid by annual annuities up to 1925 of £319,115, charged against the Colonial Services Vote and therefore provided by the British taxpayer. During its construction and up to the year 1905 Uganda and the present Kenya were under the control of the Foreign Office, but from that year the East African Protectorate was transferred to the Colonial Office. It had to be assisted by an annual grant in aid and in 1906 it was recognised that the idea of repayment concurrently with the receipt of a grant in aid was impracticable. This arrangement was therefore

"Mr. Churchill, however, as Under Secretary of State informed the House of Commons on August 6, 1907 that the Railway would belong to the Imperial Government when the debt was paid off, the debt referred to being the terminating annuities borne on the Colonial Services Vote and repayable to the Consolidated Fund which had advanced the original capital. By the year 1913 the Protectorate was paying its way and the Treasury agreed to its being released from their financial control. No mention was made of the capital liability on ac-

count of the construction of the Railway. The question remained dormant until the discussions began with the Treasury, first in regard to the loan of £5,000,000 raised in 1922 and later the assisted loan voted by Parliament in 1924.

"By that time it had become clear that the system of absorbing the profits on the Railway into the finances of Kenya was both unfair to Uganda and also led to a neglect of the adequate maintenance of the line. It was therefore decided that the finances of the Railway must be separated from those of Kenya and that surplus earnings must be devoted in the first instance to the debt charges on loans, then the provision for renewals and lastly to the reduction of rates as far as possible."

Liability Recognised

Sir Alan Pim quotes further references to the question of the responsibility for the original outlay on the railway and states that on April 30, 1925 the Colonial Office wrote: "The liability for the repayment to His Majesty's Government of the sum originally expended on the Uganda Railway is definitely recognised." Sir Alan continued: "The formal liability of the Colony for the repayment of 5½ million pounds on account of the original cost of construction of the railway has, therefore, been definitely accepted by the Secretary of State, although it has been pointed out that the transport system on which this burden is to be imposed is far more extensive than that originally constructed at Imperial cost and that these extensions already impose a heavy burden of debt on Kenya and to a much less extent on Uganda. As now arranged the whole question will come under review in the year 1936.

"In view of the present financial and economic position of the Colony as set out in this report I trust that it may be found possible to relieve the Colony of the prospect of this heavy additional burden.

"It has been shown that the considerations which led to the construction of the Railway have practically no connexion with the development of the present Colony of Kenya. It must be acknowledged, however, that although considerations in connexion with Kenya played no part in the construction of the line, its existence has nevertheless been essential to the progress of the Colony. It would have had to be made sooner or later if the country was to be developed, though possibly this might have been carried out on more economical lines."

June 5th, 1908.

ment and the Railway Advisory Council as "negotiations" is, of course absurd. The Railway Advisory Council has no more right to "negotiate" such a claim by the British Government against the peoples of Kenya and Uganda than the Nairobi Municipal Council has.

Money Spent Forty Years Ago

Briefly, the claim is this—that the peoples of Kenya and Uganda should refund to the British Government the five and a half million pounds it spent forty years ago on constructing the original Uganda Railway. Forty years ago, mark you.

Now a claim of that magnitude, even though it be many years "statute barred", cannot be disposed of in a few breezy sentences designed to arouse your interest, so let us examine it with a rather more judicial air. Such a claim may be made on any one of these grounds or on a combination of them: (a) legal, (b) equity, and (c) political expediency.

Legally, the British Government has not a leg to stand on. The Railway was built without any question of these territories having to pay the cost; the money was provided for the purpose by the British Government without any question of these territories ever having to refund the cost. And for the very good reason that the building of the Railway was a liability undertaken by the Imperial Government in fulfilment of treaty obligations and to meet Imperial necessities. Legally there is just about as much justification for asking the people of Belgium to refund the cost of Britain of defending Ypres during the Great War as there is for asking the present inhabitants of Kenya and Uganda to refund the cost of building the original Uganda Railway.

The Facts in Brief

If you would be convinced of the truth or otherwise of these statements you must make an intimate study of the history of the partitioning of Africa but if you merely want to be satisfied that you would be doing the right thing in demanding an imperial trial of this "claim" you will find all the evidence you need in the very readable autobiographies of the men who laid the foundations of the Empire in Central and Eastern Africa. Very briefly that story is that our mid-African possessions (Tanganyika excluded) were "acquired not by conquest but by treaty". The treaties or agreements were of two entirely different sorts. One lot was between the different "Powers", under which it was agreed that the partitioning of Africa should be left to certain of these Powers on the understanding that they would bear the cost of "carrying the white man's burden" and allow all the Powers signatory to the Agreements to share in the resultant trade benefits. The second lot of Agreements was between the Partitioning Powers and the Native Rulers. Under these;

the natives agreed to accept "protection" in return for the Protecting Powers doing all that was necessary to make that protection effective. It was in fulfilment of these agreements, and for the protection of British interests in the Sudan and Egypt, that the Uganda Railway was built. Not until twenty years after it was built was it suggested that these territories had any liability to refund the cost, and the suggestion came then not from the British Government but from a Committee of the House of Commons, (inspired by some Smart Alec who knew nothing of the facts probably), and has been played about with on and off since in the hope that some day it would be possible "to put it across us."

June 5th, 1938.

"Now is the Time to Grab"

The situation is now considered to be ripe for putting it across us. Lord Delamere—the one man in Kenya politics who could always be depended upon to recognise a principle when he saw it—in fact, and in his place we have a most popular Governor and his satellites. The Railway concern are full to overflowing. What is more natural than that we should now be asked to recognise the "hablity"?

As the "negotiations" are being carried on behind closed doors one is left to surmise on what grounds the "claim" is being pressed. If on legal grounds, there is no case; if on grounds of equity the case is so poor that the claimants dare not submit it to a competent, impartial tribunal. The British Government's investment in Eastern Africa has not proved unprofitable from whatever standpoint it be considered. What claim in equity can there be, then, for a refund of a portion of the capital expenditure that was necessary to make the investment profitable?

Danger of Weak "Compromise"

Most people say that they do not recognise political expediency as moral justification for the otherwise unjustifiable actions of statesmen and governments, but in practice they do—provided their conscience is well lubricated with plausible sophistry. That

will almost certainly happen in this case. Lots of highly respectable and influential people, who should be as indignant about the way in which his "claim" is being dealt with as they were a few weeks ago about the arbitrary manner in which Germany enforced her claim to absorb Austria, will be all in favour of a reasonable compromise: something on a 50:50 basis say. Peace at any price is their idol, if only it can be made to appear to the commonality as the lofty patriotism of the better-off classes. And many of the commonality will rise to the bait because they love to associate with good company. But no sophistry can disguise from the thinking man and woman that any attempt to enforce this "claim" without submitting it to the competent authority in such cases—the Judicial Committee of the Privy Council—is Fascist Dictatorship masquerading as Parliamentary Democracy.

The manner in which our political leaders react to this claim will be a critical test of our capacity for any measure of self-government in the immediate future. Inexperience may serve as excuse for incapacity; but there can be no foundation on which to base a case for self-government even of the most restricted description if the people's leaders have not the understanding "to recognise a principle when they see it". It is not merely five and a half million sterling that is at stake in this issue. The future of political democracy in these parts is bound up in it.

Nairobi, Friday 10th June, 1938.

NOTES OF THE WEEK

Although no official statement has been made it is an open secret that the British Government has been commenting on the **Cost of the Railway**, by our contemporaries, that the British Treasury is endeavouring to press a claim on the Kenya Government or on the Kenya and Uganda Railway, (I am not clear which) for £5,502,592, the original cost of building the line from Mombasa to Kisumu. The first reaction on hearing of this claim is naturally one of the greatest indignation, and one is tempted to take the line of voicing the strongest protest possible, and of urging that under no circumstances should we listen to it or concede it. But the situation is far too critical, and we are in far too dangerous a position to rely on bluster and threats to save us, and protest without arguments will avail us little. It must be remembered that it is the British Treasury which is making the claim on us through the Secretary of State for the Colonies, and the British Treasury is a very powerful body and on questions of this kind has the benefit of the best legal advice obtainable. What we have got to do is to keep our heads and tempers, examine this claim quietly and calmly, and put up a reasoned argument why it is untenable and why neither the Railway nor the Colony should pay it. And I am sure we can do it. Before however we start on our arguments let us examine the case for the British Treasury and see on what grounds they make this claim, and what justification they are likely to allege in support of it, and in order to do this perhaps it would be better to give a short history of the Railway, and see why it was built.

The idea of building a single-line rail from Mombasa to Uganda first originated in 1889 when the Conservative Party was in power in England. Three main factors and one comparatively minor one influenced this idea.

The first factor was the serious trouble

which was being caused by the Mahdi in the Sudan, and the desire to obtain an approach to that country from the South if necessary. Secondly the fact that all the great powers at that time were competing to extend their spheres of "influence" and thirdly because the British Government was very anxious indeed to control the headwaters of the Nile. In the words quoted by Elspeth Huxley, "this strategic reason was important. It was built up as follows, whoever rules Uganda controls the Nile, whoever control the Nile dominates Egypt, whoever dominates Egypt holds the Suez Canal, and whoever holds the Suez Canal has his hand upon the throat of India Trade." The minor factor was the concession to the missionary spirit of the age, which took the form of a determination to put a final stop to the slave trade, which to a certain extent still existed in these territories. This minor factor however was for political reasons strongly emphasised in order to gain popular support, it being a curious psychological trait in the character of the British taxpayer that although they will view with indifference the greatest distress in their own midst, they can always be moved to the point of voting money for hard luck stories thousands of miles away, especially if the "hard luck" occurs in tribes they have never heard of, and whose names they can't pronounce.

Those in brief were the reasons which prompted the building of what was at first known as the Uganda Railway, and it will be noticed that the question of the potential wealth of the country or development had no part, or at least very little part in them. That it was mainly strategic is proved by the fact of the direct line which was taken to the lake, and that no attempt was made to tap the most fertile parts of the country or to ascertain where from a production point of view, a railway was most necessary. Again to quote Elspeth Huxley on the subject. "The only factors (Great Britain), did not take into account were the economic justifications."

And so in 1897 the first line was laid.

The Building of the Line.

The actual money to build it was borrowed from the Consolidated Fund, under the Uganda Railway Acts of 1896 and 1902 and it was repaid to the National Debt Commissioner by annuities of £319,112 the final payment not being made until 1935.

Now when this money was first provided it was stipulated that a zone of land two miles in width, that is one mile on each side of the line, should be allocated to the Railway and that in due course this should be sold and the proceeds should go to the British Treasury to recoup them for building the line. Remember that point because it is important, and a proclamation acquiring this zone was passed in 1897. In passing it should be noted that the British Government had no shadow of a legal right to seize this land, but they did that sort of thing in those days, and there was no League of Nations to threaten the Peace of the World by talking about "sanctions". Of course this idea did not work, as no one would buy the land. You must also remember that at that time the Protectorate was not paying its way and did in fact receive a grant-in-aid up till 1918. Before this time however the Railway had begun to make small profits and these profits were set off against the grant-in-aid, and they were not used to help recoup the British Treasury for the original cost of the Railway. In fact no question of repayment on this account was raised until 1921 when it cropped up in regard to the five million loan for the railway which was floated that year. In that year too the finances of the railway were separated from those of the Colony. It was however in 1928 when we wanted to borrow another 4 millions that the question really gained prominence and very unfortunately our public men at that time acquiesced without demur to what I consider to be a most unfortunate exchange of notes between a Select Committee on Public Accounts and the Colonial Office. It must be remembered that we wanted this loan and the Select Committee which was examining the advisability of it, in a note to the Colonial Office inserted these words "Your committee would however like to be assured, that it is formally recognised beyond the possibility of question, that the Colony is indebted to His Majesty's Government in respect of the sum originally expended on the Railway which is obviously one of its most valuable assets." To this the Colonial Office replied in a letter dated April 30th 1925.

"The liability of repayment to His Majesty's Government of the sum originally expended on the Uganda Railway is definitely recognised." In 1925 also a Railway Order-in-Council was promulgated which specifically mentioned this indebtedness.

In 1936 also when a number of railway reductions were being made this subject was again referred to by the Colonial Office and again no great demand was raised by our leaders, possibly because they did not know it was being raised, although Sir Joseph Byrne himself in a dispatch stated "that it would be no more logical to demand repayment of the original grants for the Railway than it would be to demand repayment for the Grant-in-Aid."

There is another unfortunate matter. Ever since 1925 in the capital account of the Railway published annually in the General Managers Report have appeared these items, £3,502,592 on the debit side and against this on the asset side "Lines open for traffic"; you will find it on page 91 of the last years report. In view of these facts I am very much afraid that it could be contested that in law there is a technical debt to the British Treasury, just the same as Britain owes a technical debt to America for war payment. But I submit these two debts are about on a par in equity.

Although a lawyer might possibly argue that there is some shadow of substance in the Treasury's claim, there is no doubt at all that in equity there is absolutely none.

As I have pointed out the railway was built partly to further the strategic aims of Great Britain and or for altruistic purposes. In neither case is there any moral justification whatsoever that this Colony should pay. How are the natives of Kenya or the settlers who arrived after the Railway was built concerned with the strategy of Great Britain forty years ago? What if the Treasury argues that the railway was built to satisfy the missionary zeal of a former generation then why should this generation pay for it?

It is true that when the Imperial Government discovered that they could not recoup themselves by selling the land which they had taken without payment from the natives, and which had no value until the European settlers arrived, then they handed this land back to the Kenya Government; but the Kenya Government made no money out of it either. A lot of the land lay in the native reserves and a whole lot of the rest of it had to be given away to settlers at a peppercorn price in order to induce them to develop it. It must be remembered that until the Government had so induced settlers to come here the railway was being run at a loss. After however the settlers arrived, the Railway began to show profits and so the Imperial Government was enabled to reduce the grant-in-aid. In other words it was only by the action of the Kenya Government of giving away this land that the British Treasury was enabled to obtain relief from large annual cash payments.

Actually of course, the initial cost of the railway was just about double what it should have been, and it is probable that a private firm would have built it for about half the sum that was in fact expended on it.

That Kenya should be entirely relieved of this technical liability if there be one, was admirably pointed out by Sir Alan Pim whose report was accepted by the Home Government. I do suggest they cannot have it both ways, and if (as they

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have done) they implement it to the extent of imposing Income tax on us, then they must implement the rest of the report as well. I frankly admit as Sir Alan Pim points out, if the railway had not existed, then no settlers would have come to the country. That is true, and it is also true that if shipping lines had not existed we should not have come here, but we are not asked to repay the capital cost of building the ships. I submit that by all moral laws this claim is unjust and untenable and very effort at our disposal must be made to resist it. One word more. As stated above no official pronouncement has been made on this matter and so I am unaware whether this claim is being made on the Colony or on the Railway, but I do not see that it matters very much. If by some almost inconceivable mischance the British Treasury does manage to get away with it, and if law does prevail over justice and we are forced to make a token payment according to the practice in such cases established by Great Britain, then it is a matter of indifference who pays the token. If the Colony does it, then it establishes the fact forever that the Railway to Kisumu is the sole property of the Colony and we could at once enter into possession of that property, and extract the token payment from it. The railway in any case is the only asset which could pay, in fact I strongly suspect that the real reason that the Treasury is pressing the claim is because of the existence of the colossal railway reserves, which we have so foolishly allowed Sir Godfrey Rhodes to accumulate. God knows I have pointed out long enough, and loud enough and often enough the incredible folly of our railway policy.

8th July, 1938.

NOTES OF THE WEEK.

One of the most amazing things to me in the political life of this Colony today is what would appear on the face of it to be the apathy towards this alleged debt of five and a half millions, the original cost or rather the original price paid for building the railway. It is well known that the British Treasury is pressing this claim, all the press of the Colony have openly commented on it and from correspondence from London I gather it is the common talk in East African circles there. Yet there has been no official statement about it at all, and as far as the general public is aware no official has in any way advised the public of the danger. In fairness however to the elected members it should be admitted that presumably they have not made any public statement about it for the good reason that they themselves know nothing about it, or if they do they have gained their knowledge under the promise of secrecy. If the matter has got as far as the Executive Council, or the Railway Council that is as far as it has got, and both those bodies meet in secret.

I believe however the situation to be serious, the more so because there is a danger, (for the moment I put it no stronger than that) that when this matter does come before the Legislative Council it may come with the Government attitude to it already determined, and approved by the Colonial Office.

This is the actual position as far as I know it, and I may as well state right out that I have obtained my information from a friend in London who is in the position to know, and whose reliability I have frequently tested—and proved.

The matter has been brought up by the British Treasury, who as you can imagine are searching every possible avenue to rake in money. Kenya is of course not the only Colony they are trying to tap, there are several similar alleged loans in other Crown Colonies which the Treasury is also endeavouring to call in. In the case of Kenya however the question was in any event due to come up for settlement

this year, and it was universally expected that a formal release of the debt would be granted. I do not think I am overstating the case when I say that every Governor we have had, every public official, and in fact every Secretary of State for the Colonies confidently expected that this would happen; as of course it still may.

Now what has happened up to date is this; the Treasury has presented its formal demand to the Secretary of State for the Colonies who has passed it on to the Governor who has presumably replied. I have no reason to doubt, and do not doubt, that H. E. has taken and will take the same line in the matter as was taken by his predecessors, Sir Joseph Byrne and Sir Edward Grigg, and as was advocated by Sir Alan Pim, and has put up or will put up, as strong a case as possible for the total remission. But now a complication arises, I presume that the demand for payment was passed on to H. E. as High Commissioner of the Railway and not as Governor of Kenya, as it is obvious that if there be a debt, that debt must lie on the Railway, but Sir Philip Mitchell is also joint High Commissioner of the Railway and what attitude he will take or has taken is of course impossible to say. But I am very nervous about the position, especially as there has just been a Governors' Conference in Uganda, and although the subject was not on the agenda, I cannot believe that it was not discussed between the two High Commissioners.

Now the Legislative Council does not sit until August 5th and in the absence of any voluntary official communication, there is no method of obtaining any information of the subject until then, and what I am frightened of is, that before that time has arrived something may have been sent from this country that will suggest that we might conceivably compromise on a token payment now, with a promise to pay an agreed sum at some later date. That is what my London correspondent thinks may happen, and I submit as strongly as I can that the country will be mad if it agrees to anything of the sort. If we do, and if we admit a debt, even if payments are not made for eight or ten years to come, it is going to impair our credit and make very difficult the raising of any loan for agriculture or roads or even defence and I believe a loan for those purposes is essential. After all it was only four years ago that Sir Philip Cunliffe Lister told us that our credit was not sufficiently good for another loan, and yet the British Treasury is now trying to foist another five millions on to us, not for development, but in order to pay for their economic and altruistic ideas of forty years ago.

I believe very sincerely that if we stick together over this that the Imperial Government must and would waive the claim as I have the proof that unofficial opinion

The Position in Equity.

in Uganda is entirely with us. The fact that in 1923 Mr. Amery very wrongly acknowledged the debt for us is nothing; that was merely one imperial official agreeing with another that a third party owed a technical debt. With every possible respect also I submit that no Secretary of State, no High Commissioner, or Governor can arbitrarily fasten this loan on us. The only people who can do that is ourselves who are the people who would have to pay.

It would indeed be a monstrous state of affairs if the Imperial Parliament had the power to appoint their own nominee to be Governor of a Crown Colony, and then instruct him to acknowledge a debt on behalf of that Colony. I submit that in equity it would bind nobody, what ever it might do in law, but as stated above I do not believe for a second that our Governor would be party to such a scandalous abuse of power.

The great majority of the people of this Colony have no need to talk to prove their loyalty as British subjects, and if the British Parliament today declared Crown Colonies to the effect that they were in a financial jam over rearmament and needed help, then I imagine every Briton overseas would seriously consider how best to provide that help. But this is not the case of course, as the British Parliament has only this year cheerfully remitted a debt from Eire which amounted according to Mr. Winston Churchill, to a hundred million pounds and which both in equity and law had certainly more justification than this claim. And this sum of two and a half millions which according to my London correspondent is the sum on which the British Treasury hopes to compromise, would finance rearmament for perhaps two days, and even then not immediately but some years hence.

I have been at some pains to find out if there is any

The Argument for Compromise.

argument for paying this sum or rather a portion of it, and to be frank I have met two men who thought that it might be diplomatic to compromise. I will give you their arguments. The first thought that it would obtain for us a friendly House of Commons, and the second said that it would rid the Railway for ever of Treasury control.

Now let us examine these arguments. Let us first take the question of a "friendly House of Commons". To begin with I am certain that you cannot buy the friendship of the House of Commons, any more than the payment of Danegeld bought the friendship of the Danes, and in the second place it would not be worth buying if we could. The House of Commons may anyhow change and in fact must change drastically in the next few years, and the whole of our Colonial History proves that no colony ever has had a friendly House of Commons

until she has gained autonomy, or been powerful enough to cause considerable trouble. Actually if we compromised now and paid half of this alleged debt, we should only be told we ought to have paid the lot, and in the inconceivable circumstance of the whole debt being fastened on to us, we should again be told that we were merely doing our duty. As regards the suggestion that the Railway would then be free of Treasury control; it is free now to all intents and purposes, in fact in practice it is free from any other sort of control except that of the management, and taking all its reserves from it would not improve the situation.

There is in equity no argument at all why we should admit or pay this debt, or any portion of it and if we have any virility in us we shall not do it.

Now arises the question, what is to be done and how are we to

What is to be Done?

make the position clear that the people of this Colony do not admit the debt and therefore will not pay it? For the moment we have to take the hardest of all courses, that is do nothing but wait. It is to use crossing our bridges before we come to them, and we must at this juncture rely on our officials and elected members to fight the case for us.

You must remember that for the moment all that has happened is that the

British Treasury has formally presented its demand, as it was naturally bound to do, and that it may be that our Governor and his advisers have successfully refuted the claim or will do so

presumably an official statement will be made at the opening of the Legislative Council, and if it is not, then of course questions can be asked about it. As stated above my impression is that our own people, that is our own officials agree with our point of view, and will do their best for us, but frankly I am frightened of Uganda. What we have got to do then is to be prepared for the worst whilst hoping for the best, and if the worst does happen then we must very seriously consider our position.

Personally on the facts as known at present, I believe that there can be no compromise in this matter, but we must of course give our elected members every chance (they have not had one yet) of framing a plan of campaign when they are in full possession of the facts. It is no good starting a popular agitation until we know for certain what we are agitating against, and the whole idea of these articles at the moment is to warn the public what may happen, not what necessarily will happen. But if the worst does come to the worst, I can conceive of no action within the law which would not be justified in order to combat what I believe to be an entirely inequitable claim, and one which if successful would go far to jeopardise the economic future of the Colony.

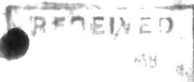
KENYA
No 173



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GOVERNMENT HOUSE
NAIROBI
KENYA

CONFIDENTIAL

18. September, 1938.



Sir,

With reference to your Confidential despatch of the 8th June, I have the honour to transmit to you, for your information, a copy of the corrected typescript record of the debate which took place in the Legislative Council on the 16th August on the subject of the repayment of the £5 million provided by His Majesty's Government towards the capital cost of the Kenya and Uganda Railway.

2. The Governor will shortly be addressing you on this subject in his capacity as High Commissioner for Transport.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Armede

GOVERNOR'S DEPUTY.

THE RT. HON. MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

of Encl to Secretary (32)

Kenya

STATEMENT ON 40-YEAR-OLD LOAN

From Our Own Correspondent

NAIROBI, Thursday

The Government has accepted a motion of the Legislative Council calling for a statement on the proposal that Kenya should repay £3,000,000 received from the British Treasury 40 years ago. It was advanced for the construction of the railway linking Mombasa and the Victoria.

The elected members are indignant at what they describe as a "colonial" suggestion that a struggling body of colonists still in the early stages of development in a country should be saddled with a loan for which they have no liability whatever.

38/33/35

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Sinking fund contribution

I have discussed this with Mr. Wardley and he has agreed that the matter might be left over for further discussion at the time when the question of the \$50 million Railway debt is discussed. We therefore did not go into the matter in any great detail at this stage, but I gathered that the general Treasury view is that Kenya's credit in the City would be greatly enhanced if it could be shown that they were making more adequate provision for their sinking funds, and that this is particularly important in view of their desire to raise yet another loan.

As regards the Railway share of the debt, I gathered his view to be that the Railway is rather overdoing its policy of piling up funds for a multiplicity of purposes (reserves, renewals, betterment, etc.), and that, from the City point of view, it would be all to the good if some of this money could be put into sinking funds instead of some of the other funds.

As regards the Railway debt, I mentioned that we were still awaiting the High Commissioner's despatch but that we gathered that it would not be very much longer delayed. Mr. Wardley is now going on leave and I shall be going when he comes back, so that the discussions can in any case not take place before September, and I suggested to him that in that case it would be very much more satisfactory for all concerned if they could be deferred until October when Mr. Freeston will be here to take part in them. Mr. Wardley was inclined to agree, but he thought

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thought that advantage should be taken of
Sir Godfrey Rhodes' presence on leave to have,
at any rate, a preliminary discussion
in September. I have since seen
Sir Godfrey Rhodes and he is quite prepared
to take part in such a discussion, though
he would prefer it to be during the first
fortnight in September.

J.P.
20.7.33.

Extract from Note of Interview between
Secretary of State and Lord Francis Scott
on 15th July, 1938.

The Railway Debt.

Lord Francis Scott stated that he assumed that the Colonial Office ranged itself wholeheartedly on the side of remission, as recommended by Sir Alan Pim. The Secretary of State intimated that whilst they would be ready in the Colonial Office to do their best for the Colony, he did not think the problem was quite so easy as that. He anticipated a great deal of difficulty vis-a-vis the Treasury on this question. They undoubtedly had a good case for some repayment and in view of the re-armament expenditure this was the worst possible time for asking Parliament to forgo the claim. After some discussion Lord Francis Scott intimated that he quite understood that some repayment might have to be made. He thought, however, that it should come from the Railway and not from the Kenya Government. Lord Francis Scott inquired whether, as a matter of tactics, it would be best for them in Kenya to start off with a refusal or with a suggestion for compromise. The Secretary of State said that it was not for him to express a view on this. Possibly it would be expedient to start with a proposal for complete remission, and later to make a compromise proposal; but that was a question for them in Kenya to decide themselves. The question had been referred to the Governor and he was awaiting the Governor's answer.

memo. to report to the authorities
between Lord Francis Scott. The 5-27-38

K

17.6.38

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I think that it would be well to bring it home to Lord Francis Scott that complete remission of this debt, as suggested by Sir Alan Pim, would be a very difficult proposition. The Treasury will certainly stand out for partial, if not full repayment and they will have a good case for doing so. The Railway may have been built for imperial objects, but the Treasury attitude is that the Railway is an asset to the country and is making money, and that the motive for which it was created is quite irrelevant. They also argue that there is no question that the original advances were intended to be irrecoverable.

I annex a copy of the despatch in which this question has been referred to the Governor. So far no reply has been received, though a reminder was recently sent. It will be seen that the general tenor of this despatch is that some repayment will have to be made.

(Signed) A. J. DAWE.

15.6.38.

As the memo. shows, there was in and after 1924 a definite change of ideas from that of the United Kingdom being entitled to the profits (Mr. Churchill in 1907 had admitted in the House that the line belonged to the United Kingdom) to that of repayment of debt. It was on the latter basis that Sir R. Grigg told the Legislative Council in 1926 that the debt had to be reckoned with.

(Intd.) W.O.L.

15.6.

pp. 54 et seq of volume herewith.

Sir W. Parkinson.

1. Draft reply submitted.

2. I have held it back on a point about the Railway debt. This subject is mentioned in the note of the interview with Lord Francis Scott. I thought at first that it might be desirable for the Secretary of State to give, in his letter, a lead to the Governor in favour of starting off our negotiations with the Treasury with a proposal for a compromise and not with a blunt refusal to pay. The Treasury proposals for the settlement of Colonial indebtedness generally are framed in a generous spirit, and it seemed to me that our best policy would be to avoid dealing with this K.U.R. question, on our part, in the spirit of the oriental bazaar.

But a new factor has now intervened. If the Treasury are now going to make liberal grants to the Colonies, as foreshadowed by the Secretary of State at Monday's meeting, then the whole question of the outstanding claims and counter claims between the Treasury and Colonies must clearly come up for fresh review in the light of this new situation. It is obviously illogical to make grants to the Colonies with one hand and with the other to take money from them. It is also impolitic in the cases where the exaction excites political feeling in the Colonies. In such cases it would clearly be better first to satisfy Colonial claims before beginning to grant new money. (c.f. the Cyprus tribute). This matter will clearly have to be thought out and in the meantime I have therefore omitted any reference to the Railway debt in the draft letter.

3. Please see Mr. Hibbert's note attached.
We have already, in an official despatch, asked the Governor when the report of the Committee is likely to be ready. I think that any suggestion for speeding things up would, for obvious reasons, come better in a semi-official letter than in an official communication; and I have therefore taken the opportunity to add an inquiry in this draft letter. The letter will go by air mail and get there in a few days. The Governor is already fully aware of the pressure which is being put on the Secretary of State in the House, as all Parliamentary references to the question have been immediately sent out to him.

? Proceed as in the draft.

Mr. Peakin to consider afterwards the question of registration and of taking extracts from the correspondence.

(Signed) A. J. DAWE.

30.6.38.

(Intd.) A. C. C. P.

1.7.38.

3. Please see Mr. Hibbert's note attached. We have already, in an official despatch, asked the Governor when the report of the Committee is likely to be ready. I think that any suggestion for speeding things up would, for obvious reasons, come better in a semi-official letter than in an official communication; and I have therefore taken the opportunity to add an inquiry in this draft letter. The letter will go by air mail and get there in a few days. The Governor is already fully aware of the pressure which is being put on the Secretary of State in the House, as all Parliamentary references to the question have been immediately sent out to him.

† Proceed as in the draft.

Mr. Paskin to consider afterwards the question of registration and of taking extracts from the correspondence.

(Signed) A. J. DAVE.

30.6.38.

(Intd.) A. C. C. P.

1.7.38.

38179/18/38

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Memo prepared in connection
with interview between H. S. of S. &
Lord Franco Bant 19th 38
£5,500,000 Railway Debt.

In 1896 and 1900 sums, totalling about £5½ million, were voted by Parliament for the construction of the "Uganda Railway". The purposes in view at that time were not the development of the present Colony of Kenya, but the effective occupation of Uganda, its defence against attack by the Mahdi or the French, and the ~~purpose of the Kenyan Railway~~ ~~work.~~ ~~the~~ investment would be commercially profitable was not expected.

p.p. 237 et seq
of Sir A. Pim's
Report.

In 1921 and 1924, during discussions preceding the raising of loans for the development of Kenya, the question of this £5½ million came up with the Treasury. By the latter date it had become clear that the system whereby the Railway profits were absorbed by Kenya was both unfair to Uganda and also led to neglect of adequate maintenance of the line. The Treasury maintained that the net revenue of the Railway was due to the Exchequer, but agreed that for ten years (i.e. until 1934) net revenue might be applied to Railway purposes and that no interest would be charged on the original advances. In 1924 the question was also examined by the Select Committee on Public Accounts, which reported:-

"The Colony so far has made no contribution towards the original cost of construction..... Committee would like to be assured that it is formally recognised..... that the Colony is indebted to His Majesty's Government in respect of the sum originally expended on the Railway....."

In reply, it was ^{virtually} stated by the Colonial Office in 1925 that "the liability for the repayment to His Majesty's

38 79/18/58

... proposed in connection with relations between U.K. & S...
has been...
£5,500,000 Railway Debt.

In 1896 and 1900 sums, totalling £55 million, were voted by Parliament for the construction of the "Uganda Railway". The purposes in view at that time were not the development of the present Colony of Kenya, but the effective occupation of Uganda, its defence against attack by the Mahdi or the French, and the ~~construction of a railway~~ ^{the} investment would be commercially profitable was not expected.

p.p. 259 et seq of Sir A. Pim's Report.

In 1921 and 1924, during discussions preceding the raising of loans for the development of Kenya, the question of this £55 million came up with the Treasury. By the latter date it had become clear that the system whereby the Railway profits were absorbed by Kenya was both unfair to Uganda and also led to neglect of adequate maintenance of the line. The Treasury maintained that the net revenue of the Railway was due to the Exchequer, but agreed that for ten years (i.e. until 1934) net revenue might be applied to Railway purposes and that no interest would be charged on the original advances. In 1924 the question was also examined by the Select Committee on Public Accounts, which reported:-

"The Colony so far has made no contribution towards the original cost of construction..... Committee would like to be assured that it is formally recognised..... that the Colony is indebted to His Majesty's Government in respect of the sum originally expended on the Railway....."

In reply, it was ^{virtually} stated by the Colonial Office in 1925 that "the liability for the repayment to His Majesty's

Majesty's Government of the sum originally expended on the Uganda Railway is definitely recognised".

In 1934 when the subject came up for discussion (as arranged in 1924) Kenya's finances were so precarious that it was again agreed to defer consideration of the matter, this time until 1938. In January 1938 the Treasury duly raised the subject again. Kenya is now preparing a full exposition of its views, which will be doubtless strongly against repayment. This course, which is in conflict with the 1923 admission of liability, has been taken by Sir Alan Pim in his report (published in 1936 and generally accepted by H.M.S.) in which the hope was expressed that it would be found possible to relieve the Colony of the prospect of this heavy international burden.

31879/13/38.

NOTE OF A MEETING AT THE TREASURY
ON FRIDAY, 1ST OF JULY, 1938.

PRESENT:

TREASURY.

Mr. Hale.
Mr. Barclay.
Mr. Jones.

Colonial Office.

Mr. Boyd.
Mr. Walker.
Mr. Grimith.

TANGANYIKA.

Mr. Macdonald-Kennedy.
Mr. Sandford.
Mr. Robins.

Subjects discussed:-

- (a) Future arrangements for financing the Renewals Fund for the Tanganyika Railways.
- (b) Raising of a new loan for Tanganyika.
- (c) Question of the repayment of Tanganyika's unfunded debt to the Imperial Treasury.

Provision for railway renewals.

Mr. Hale observed that at the end of 1936 the accounts for renewals stood at £1,650,000 for U.K.-British assets plus £287,000 for British assets, and asked what actual provision had been made for replacement of the assets.

Mr. Robins replied that before the Fund for Railway Renewals was started in 1936, replacement of assets had been provided from loans and revenue. At the end of 1937 the Fund stood at £100,000; a further £50,000 had been provided in the Estimates of the Territory for 1938. It was estimated that the actual expenditure on renewals during the next five years would amount to £150,000, with a further £50,000 in the ensuing five years. On the basis of a contribution of £50,000 annually to the Fund, there would be an unspent balance of £250,000 at the end of 1942 and £410,000 at the end of 1943. It was recognized that provision on the lines proposed was a hard to work arrangement, but it was impossible for the Railway to set aside, or for the

Territory

Territory to provide, any sum for Railway Renewals comparable with the amount of \$112,000 per annum required for British assets under General Hammond's life of wasting assets formula.

Mr. Walker pointed out that no renewals expenditure on pre-British assets (the annual depreciation on which was estimated at \$120,000) was included in the \$110,000 mentioned by Mr. Hobson.

Mr. King observed that the life of the wasting assets under General Hammond's formula was 25 years, and asked whether it was possible to envisage a renewals programme beyond the ten year period.

Mr. Hobson replied that it was not possible. The calculation of a 25 years' life was quite arbitrary. An examination had been made recently in Kenya into the lives of wasting Railway assets and it had been found that in many cases no such regard had been paid in the past to the effect of tropical conditions. Neither the rails of the Kenya and Uganda Railways nor the rails of the Tanganyika Railways had been laid down so long as 25 years ago. The pre-British rails in Tanganyika were still in excellent condition.

Mr. Walker remarked that extent of wear was a factor in estimating life as well as effluxion of time. The railway assets had not hitherto been worked to full capacity.

Mr. King asked if it were possible to prophesy the general future of the railway and suggested that a contribution to renewals at the rate of \$20,000 a year only was laying an undue burden on posterity.

Mr. Sanford said that the future of the Railway rested on the immediate development of the Territory. Every form of development brought something to the railway. There was no automatic way of increasing the receipts of the Railway such as by a systematic increase of railway rates

He pointed out the difference to the Tanganyika Railways that had been occasioned by the loss of the Belgian Congo traffic. In 1929 that traffic brought in half a million pounds revenue. The total up and down traffic with the Belgian Congo in 1927 was 275,000.

Mr. Mackenzie-Kennedy emphasized the need for development and cited the Vig scheme that had already been started - clearance of tsetse fly infested country, and the conservation of water and forest resources. In his opinion it was necessary to develop the country before looking up large sums in a Railway Renewals Fund. Development would in itself bring additional revenue to the Railway.

Mr. Hald pointed out that in the letter which he had sent to Mr. Hald he had suggested an arrangement as regards further contributions to Railway renewals; that the arrangement was suggested after discussion in the Colonial Office with the Tanganyika representatives and was a compromise on the proposals contained in Mr. Mackenzie-Kennedy's Confidential despatch of the 26th of October, 1927.

After further discussion, Mr. Hald observed that he would have liked to see a larger annual contribution to the Railway Renewals Fund, but, having regard to the comparatively small renewals expenditure programme of the next ten years, he thought the Treasury might be prepared to agree to a compromise on the lines proposed in Mr. Hald's letter. He understood, however, that this was a tentative suggestion which would have to be considered by higher authority in the Colonial Office. In the meantime the Treasury must be regarded as uncommitted to the revised formula.

Raising of a new loan for Tanganyika.

Mr. Hald said that he had no doubt that, having

regard

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regard to the present United Kingdom defence requirements, the Treasury would not be prepared to approach Parliament with a new act for the raising of a loan for Tanganyika. He had thought that Tanganyika's request had been for a further loan under the guarantee given by the Palestine and East African Loans Act of 1926, and had been surprised to learn that that was not the case.

Mr. Darg pointed out that the introduction into Parliament of a bill for a further loan for Tanganyika would undoubtedly elicit enquiries as to the future of Tanganyika.

Mr. Buchanan-Smith replied that the Government of Tanganyika did not wish in any way to be embarrassing on the point.

Mr. Sandford explained that a number of urgent essential new works were not of the type for which a loan could be given under the Palestine and East African Loans Act, 1926. He had already given to the Colonial Office a list of items selected from the Major Works Committee report which passed the permanence test for loan works. As a purely preliminary figure, a sum of £750,000 made available in two equal parts would cover the immediate legitimate requirements against loan funds and those requiring attention in four or five years. In reply to a question Mr. Sandford said that he could not say how much of the £750,000 could be regarded as falling within the scope of the 1926 Act. He said, however, that an item which the Government considered as particularly pressing was the Dam on Salween coverage scheme, at a cost of £70,000, for which a loan could not be made under the 1926 Act.

Mr. Hale said that in his view the Dam on Salween coverage scheme clearly fell within the scope of the Colonial Development Act.

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It was left that the Government of Tanganyika should consider further their major works with reference:

- (a) to a loan from the unallocated balance of the £10,000,000 East African Guaranteed Loan;
- (b) to loans from the Colonial Development Fund;
- (c) to expenditure from surplus balances.

It was suggested that any future enlargement of the scope of the Colonial Development Act would also be of great assistance to Tanganyika. Mr. Hain said that the Treasury could hold out no hope of further legislation in the near future. The Act already covered all forms of economic development, and education was outside its scope.

Statement of Tanganyika's unfunded debt to the Imperial Government.

Mr. Hain observed that the unfunded debt amounted to £1,075,500 composed of

- (a) £445,000 administrative deficits 1921/22 to 1922/23;
- (b) £445,000 railway deficits 1921/22 to 1922/23;
- (c) £185,500 war damage restoration 1921/22 to 1922/23.

He would be prepared to recommend repayment with no interest by annual payments of £45,000 over 20 years. If this were agreed, the Treasury might be prepared to treat (c) as a war debt.

Mr. Sandford stated fully the arguments which he had put forward in the letter to Mr. Boyd dated the 19th of June, of which the Treasury had had a copy.

Mr. Hain referred to the comparatively high rate of interest being paid on the debt already funded and Mr. Hain replied that these rates were those prevailing at the time the money was advanced and any reduction might cause serious embarrassment e.g. in regard to loans from the Local Loans Fund.

Mr. Macdonald-Kennedy observed that the penetration by Germans into the Territory by means of subsidized

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settlement was a matter that could only be answered by an intensive British development policy. Nearly a third of the total white population was German, and this proportion was growing. New German settlers were all good Nazis. He drew attention to the subsidies given to the German coffee-growers against which it was difficult for the non-German growers to compete. It was alleged that for the 1935 coffee crop the Germans received first advances from Germany of £40 a ton (Parchment) and a final price of between £50 to £55. As far as could be ascertained, the same prices prevailed for 1937, whereas the market price for Tanganyika coffee averaged £32.10.0 a ton (Parchment) for the 1935 crop, and approximately £30 a ton up to the time of the Brazilian crisis in November 1937. The prices then fell to their present level of £27-28 a ton (Parchment). Mr. Mackenzie-Kennedy described other Nazi activities in the Territory. It was not proposed to ask His Majesty's Government to subsidize the British coffee-growers, but he hoped that it would be appreciated that these factors rendered the request for the repayment of the loans for post-war expenditure most inopportune.

Mr. Haig agreed that Mr. Mackenzie-Kennedy's statement had considerable weight. Tanganyika's debt was not, however, the only one, and the question of its repayment could not be isolated. The Treasury were most anxious to hear what Kanga proposed in regard to the repayment of her £5½ million debt.

Mr. Haig suggested that Tanganyika should recognize the question of principle by the repayment of a small sum annually.

Mr. Cartier said that this would probably be equally open to the objection on grounds of policy raised by Mr. Mackenzie-Kennedy and enquired whether, apart from that objection, the Tanganyika representatives would agree that a

payment

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payment of the order suggested was justifiable.

Mr. [redacted] maintained his objection on the ground of the general financial position of the Territory.

Mr. [redacted] suggested that the question of settlement be postponed for a further period during which time His Majesty's Government might make an announcement regarding the future of Tongatapu. A favorable announcement would undoubtedly lead to a flow of money into the Territory.

Mr. [redacted] observed that a report would have to be given for the [redacted] could one day to-day, as in 1922, that the reason was the financial condition of the Territory.

Mr. [redacted] pointed out that Tongatapu's financial record since 1922 had been very good and that the debt was due to the post-war expenditures.

Mr. [redacted] said that the Treasury would consider the matter further in the light of the discussion, but would not be able to define their attitude until the position in regard to [redacted] was clarified when the whole question could be submitted to higher authority.

Thursday, 10th May, 1938.

2120. Payment to His Majesty's Government towards Capital Cost of Railway. (RyA.C.C.)

This item gave rise to considerable discussion, after which Mr. Pollock proposed the following resolution, viz.

"Council, having discussed at some length the memorandum No. R.F.571 dated the 10th May, 1938, reconsiders the case for the railway to be financially sound in principle and recommends that the same be sent forward to the High Commissioner, as representing Council's view."

2. This resolution was put to the meeting and was supported by Mr. Reynolds, the remaining members voting against the resolution.

3. Major Cavendish-Bentick then proposed the following resolution, viz:-

"(1) The liability for the repayment to His Majesty's Government of the Parliamentary Grants (Uganda Railway Acts) 1906 and 1908-3 or of some portion thereof has been admitted by the Secretary of State in 1925. That admission remains.

(2) Although there are many factors which must be considered, such as the withdrawal of the land which was originally granted to the Railway, the appropriation in the past of some of the Railway profits by the Kenya Government at the time it was administering the Railway, and the carefully considered recommendations of Sir Alan Pitt, in principle the liability (if any) for any sum which may eventually be found to be equitable must lie against the Railway in view of the fact that the asset handed over does appear in the Capital Account and was in fact a railway line from Mombasa to Kisumu plus a fleet on Lake Victoria.

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(3) That a comprehensive memorandum be prepared and that negotiations should be opened with the Imperial Government in order to establish the amount due (if any) and the method of settlement.

(4) That as soon as the amount (if any) is ascertained a Commission or Committee be appointed to arbitrate with regard to the liability of the Kenya Government (if any) in respect thereof.

4. This resolution was put to the Meeting and was carried by a majority. Messrs. Reynolds and Felke voted against.



17 June, 1938.

Sir,

I have the honour to refer to your Confidential despatch of the 4th February, in the subject of the sum of approximately five and a half million pounds advanced by the Imperial Government for the construction of the Uganda Railway.

2. Having regard to the terms of article 19 of the Kenya and Uganda (Transport) Order-in-Council, 1926, and to the fact that the physical assets constructed out of the advance in question are now vested in the High Commissioner for Transport, I am unable, as Governor of Kenya, to admit that any liability for payment to His Majesty's Government rests upon the Kenya Government. In taking this attitude I do not wish to prejudge the question whether, and if so what, claim may be held to lie by the Railways & Harbours Administration against the Government of this Colony for reimbursement in respect of certain Railway assets which have been taken over by the Colonial Government.

3. I shall shortly be addressing you further on the various aspects of this question set out in your despatch under reference, in my capacity as High Commissioner for Transport.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. Brooke-Popham
 AIR CHIEF MAGISTRAL

orig - 30179/1-187-Kya

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S. 70419/37

TREASURY CHAMBERS,

WHITEHALL, S.W. 1.

21st June, 1938.

Dear Sir,

London and North Western Railway - Betterment Funds.

In reply to your letter of the 27th, we are glad that the High Commissioner for Transport may be authorised to draw on the above funds if necessary up to the amounts necessary to carry out the 1938 programmes.

We hope with you that you will be able at an early date to let us know what the local people are seeing regarding the debt due to the Exchequer.

Yours, etc.,
(Sgd.) Hale.

A. J. DAVE, ESQ.,
COLONIAL OFFICE.

Kenya

TALKS OVER LOAN MADE 40 YEARS AGO

From Our Own Correspondent

NAIROBI, Monday.

Kenya is faced with the prospect of having to find £5,500,000 advanced by the British Treasury 40 years ago for the construction of the railway linking Mombasa with Lake Victoria.

Negotiations are proceeding at present between the Imperial Government and Kenya.

It has always been assumed here that the debt would continue to be regarded as a book entry only, since the decision to build the original railway was based on the need for consolidating Britain's position in this part of Africa.

India

KENYA AND UGANDA RAILWAYS AND HARBOURS.
RAILWAY ADVISORY COUNCIL MINUTES.

March 9th & 10th

1938.

Appropriation of Surplus Balances. (R.A.C. 5.)

The Report of the Sub-Committee, appointed under Minute 2076, was laid on the table, and the Chairman of the Sub-Committee made an explanatory statement, dealing with the reasons for the recommendations contained in the Report.

2. Mr. Folkes indicated that he would be submitting a minute of dissent and this minute was duly laid on the table later in the proceedings.

3. Council agreed that the Report should be put on the agenda for the next meeting, together with a memorandum containing the views of the Administration.

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draft on 38179/14/37 Kgr

27th May, 1938.

My dear Hale,

I enclose a copy of a despatch from the High Commissioner for Transport, Kenya-Uganda, asking for yet another relaxation of the conditions upon which we approved the railway estimates. A copy of the Colonial Office telegram of the 24th December, 1937, referred to is also enclosed for reference.

It was proposed in the First Supplementary Estimates for 1937 to transfer the sums of £361,448 to the railways Betterment Fund and £28,216 to the Harbours Betterment Fund. At the end of 1937 there was £112,205 and £46,115 standing to the credit of these funds respectively. The estimated expenditure from them on new capital works during this year is respectively £205,819 and £48,232. This means excesses of £93,604 and £2,117.

E. HALL, ESQ.

I do not suppose that any decision over the best question could, in any circumstances, be so drawn that less than these two sums could be conditioned for final transfer to the Settlement Funds out of the £351,448 and £120,216 at present proposed.

Can you agree to the funds being drawn upon sufficiently to cover the 1938 programmes? You will see that the High Commissioner asks for a reply by telegram and it would be much appreciated if you could let us have your agreement at an early date.

I am sorry to have to bother you with this subject again. We have not yet had a reply from Kenya to our despatch on the main issue. The sooner they reply, the sooner we can hope to get these subsidiary inconveniences out of the way: and if we do not get a reply in the near future we will stir them up.

Yours sincerely,

(Sgd.) A. J. Dawe.

GOVERNMENT HOUSE,

NAIROBI,

KENYA.

12th April, 1930.

Dear Sir,

Here is a summary of our financial results for 1927. It is satisfactory, but of course our paper balance of £200,000 does not really represent the true position. Lockhart is making a fresh calculation of what we shall be able to call on and I doubt if he will be able to make it more than £150,000, so it is quite impossible to meet such things as a demand from the Treasury that we should pay back that five and a half million loan.

Yours sincerely,

(SIGNED) R. PROCKEN-POPHAM.

SIR W. C. BOTTONLEY, K.C.M.G., C.B., O.B.E.,
COLONIAL OFFICE,
DOWNING STREET,
LONDON, S.W.1.

10/17
Draft no.
38/79/10/37
TRANSPORT

KENYA-UGANDA

NO. 17

Colonial Office,

Downing Street,

18 March 1938.

Sir,

I have the honour to refer to my telegram No. 25 of the 24th of December, 1937, informing you that subject to the concurrence of the Lords Commissioners of the Treasury my approval of the Second Supplementary Estimates for 1936, of the First Supplementary Estimates for 1937 and of the Estimates for 1938 for the Kenya and Uganda Railways and Harbours Administration might be assumed.

2. I enclose a copy of correspondence with the Treasury from which it will be seen that, subject to two important reservations, Their Lordships do not raise any objection to these estimates: and I approve them subject to what follows.

3. As regards the disposal of surplus balances, which I was gratified to observe were expected to amount to as much as £479,150 for the year 1937 and are estimated at £326,767 for 1938, Their Lordships are prepared to concur in their allocation to the purposes which have been proposed in the Estimates, only on a provisional basis and without prejudice to my decision that may eventually be reached regarding the repayment of the £5,500,000 advanced from Imperial Funds for the construction of the Railway.

4. My approval of the Estimates for 1938 and of the

First

HIGH COMMISSIONER FOR TRANSPORT

KENYA-UGANDA

First Supplemental Estimates for 1937 must therefore be understood to be subject to this reservation, as well as to the stipulation that no further rates reduction should be made, without the prior concurrence of the Treasury, pending a decision on the question of the £5,500,000 debt.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

DOWNING STREET.

4th March, 1938.

My dear Freeston,

Thank you for your No. C/Lo/A.L. of the 12th February and for the references about the £5,500,000.

We have now referred the question to the Governor of Kenya and do not propose to pursue it with the Treasury until we get his reply. You may like to see the enclosed copies of two letters from Hale. I have sent copies also to Wade. I am taking up with Hale the question of the K.U.R. Estimates and hope we shall be able to send an official reply to the High Commissioner without much more delay.

I appreciate, of course, your reason for not wishing to express any personal views on the topic and will bear in mind your advice about keeping in close touch with Nairobi as the controversy unfolds.

Yours ever,

(Sgd.) A. J. DAWE.

L. B. FREESTON ESQ., O.B.E.

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KENYA AND UGANDA RAILWAYS AND HARBOURS

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT
NAIROBI
KENYA

P. O. Box 501

High Commissioner HIGHCOMA, NAIROBI

C/16/A.I.

12th February, 1936.

My Dear Sir,

Pre-occupation with financial matters has delayed a reply to your personal letter of the 25th of January, about the £5,500,000 Treasury advances. Even now I cannot do more than give you references to one or two salient documents on a very thorny subject.

(2) - 39/7/36
(3) - You will find enclosed in Sir Joseph Byrne's despatch No. 112 Confidential, of the 12th of October, 1936, an excellent summary of the case; see also the High Commissioner's Confidential despatch of October 29th of the same year. Your file should also contain a semi-official letter which I wrote to Flood on May 22nd, 1936, enclosing a memorandum prepared for (though never discussed by) Railway Council in 1929.

You will not expect me to express personal views on a problem which is of first rate consequence to the Railway and to the Colony, but I would urge that the Colonial Office should keep in the closest possible touch with Nairobi during the various stages of the controversy with the Treasury. It would, I think be acceptable this end, if each letter from Their Lordships were to be sent out officially to the Governor (with a copy to the High Commissioner) for his observations; incidentally such a procedure would save you much trouble.

Yours ^{ever} sincerely,

A. J. Dawe

A. J. DAWE, ESQ., O.B.E.,
COLONIAL OFFICE,
DOWNING STREET.

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Mr. Hale's memorandum on Colonists' debts to the
Xenochor was considered at a meeting on 24th February at
which Mr. Hale and Mr. Verdier of the Treasury, and
Mr. Tait of the Dominions Office, and Messrs. Calder, Bockett,
Ward, Law, Bayes and Davies were present.

The various paragraphs of the memorandum were
considered in detail and the following amendments were

Paragraph 1.

Mr. Hale was asked whether the debts were
principally from other Colonial debts, or if they
were from the Colonies themselves, and whether the
total indebtedness was within the Colonies' capacity
to repay. It was reported that the Treasury were unwilling to embark on
the consideration of any particular war debt, as it was
impossible to deal with one and refuse to deal with others.
It was also suggested that the Tanganyika debt in respect of
war usage should fall into the category of a war debt.

Paragraph 5.

It was agreed generally that if complete
repayment were impossible permission in part would be
granted, but whatever was agreed should
be qualified by the territory's capacity to pay.

Paragraph 7.

This paragraph was agreed subject to the
following amendment in line 1:-

"If repayment is finally impossible" substitute
"If it can be foreseen, repayment is, and is likely
to remain beyond the capacity of the Colony."

Mr. Hale's memorandum on Colonial debts to the Exchequer was considered at a meeting on 14th February at which Mr. Hale and Mr. Vardley of the Treasury, and Mr. Hall of the Dominions Office, and Messrs. Calder, Beckett, Boyd, Ross, Boyse and Davies were present.

The various paragraphs of the memorandum were discussed serially, and the following comments made:

Paragraph 3.

Mr. Hale was asked whether the debt should be distinguished from other Colonial debts, and it was suggested to him that in considering a Colony's indebtedness, its local indebtedness must be taken into account. He replied that the Treasury were unwilling to embark on the consideration of any particular war debt, as it was impossible to deal with one and refuse to deal with others. It was also suggested that the Tanganyika debt in respect of war damage should fall into the category of a war debt.

Paragraph 5.

It was agreed generally that if complete remission were impossible remission in part was the appropriate solution but whatever basis was agreed upon it should be qualified by the territory's capacity to pay.

Paragraph 6.

This paragraph was agreed subject to the following amendment in line 6:-

For "repayment is finally impossible" substitute "so far as can be foreseen, repayment is, and is likely to remain beyond the capacity of the Dependency".

Paragraph 7.

Mr. Hale's memorandum on Colonial debts to His Majesty's Government was considered at a meeting on 14th February at which Mr. Hale and Mr. Wardley of the Treasury, and Mr. Tait of the Dominions Office, and Messrs. Calder, Bockett, Boyd, Pave, Boyce and Davies were present.

The various paragraphs of the memorandum were discussed generally and the following comments made:

Paragraph 3.

Mr. Hale was asked whether the debt proposed to be included in the memorandum was to be distinguished from other Colonial debts and it was suggested to him that in considering a country's indebtedness the total indebtedness must be taken into account. He replied that the Treasury were unwilling to embark on the consideration of any particular war debt as it was impossible to deal with one and refuse to deal with others. It was also suggested that the Tanganyika debt in respect of war damage should fall into the category of a war debt.

Paragraph 5.

It was agreed generally that if complete remission were impossible remission in part was the appropriate solution but whatever basis was agreed upon it should be qualified by the territory's capacity to pay.

Paragraph 6.

This paragraph was agreed subject to the following amendment in line 2:-

For "repayment is finally impossible" substitute "so far as can be foreseen, repayment is, and is likely to remain beyond the capacity of the Dominions".

Paragraph 7.

107-

Paragraph 9.

Mr. Hale was asked why a year's revenue had been selected as the standard for assistance by way of loan. It was suggested that in the case of poor Colonies, a year's revenue set too high a standard. He replied that what was wanted was a standard which would avoid having to calculate the separate capacity of each Colony, and that he would be reluctant to propose anything less than a year. Mr. Beckett asked that the Colonial Office view should be noted.

Paragraph 10.

The question whether Dominica should be included here was discussed, but Mr. Hale argued that Dominica does not come into either class, and in the interests of having a consistent basis, he felt that it should be omitted. It would be going too far to remit all loan-in-aid.

Paragraph 11.

The figures will be brought up-to-date. The effects on each of the territories concerned were then considered.

Tanganyika Territory.

Mr. Boyd suggested that there were two points to be considered here: First, that Tanganyika already pays a considerable sum in respect of debt charges, (e.g. £113,460 in 1938), and had funded over £2,000,000 of her debt; and secondly, her capacity to pay. In this connection, he

he pointed out that we have been trying to persuade Tanganyika to build up an adequate Railways Renewals Fund and a Territorial Reserve Fund. They have been particularly reluctant to agree to the former and will probably plead their inability to undertake further outlay on Railway renewals if they have now to begin repayment of the outstanding debt to the Exchequer. It must be remembered, that there are several new commitments for which Tanganyika Territory must provide funds, for example, the King's African Wives reorganization, the establishment of a Labour Inspectorate and the Endowment Fund of the Higher College at Makerere. Moreover, the Territory is not as prosperous as it has been. Mr. Hale admitted that the Treasury did attach importance to building up an adequate Railways Renewals Fund, and admitted the claims of the other services mentioned above. He said, however, that it would greatly facilitate the acceptance of his scheme if he were able to show that some territories actually were going to pay off their debts. It was agreed that further consideration of the Tanganyika Territory question should be left until it was discussed with Mr. Mackenzie-Kennedy, when he was on leave in April. Mr. Hale thought that it would be useful if Mr. Boyd would let him (Mr. Hale) have an appreciation of the present position of Tanganyika and of the various funds e.g. renewal funds, reserve funds, &c. which it is desirable that Tanganyika should build up in the near future to put her finances in reasonably good order.

Nyasaland.

Nyasaland.

It was agreed that we should have to wait for Sir R. Bell's reports. Mr. Calder asked how the debt of £1,640,000, which had been relented to the Railway Company was to be dealt with. It would be desirable to give Nyasaland remission of this, but to keep it at least as a bargaining weapon as a debt from the Railway Company to the Nyasaland Government. Mr. Hale said that he would like to consider this point later.

West Indies.

Mr. Beckett agreed to the adoption of the principle suggested in the memorandum, but hinted that we might ask for a more generous treatment of Colonial Development Fund Loans. He suggested also that loans in respect of earthquake damage in Montserrat might be remitted.

Paragraph 14.

It was pointed out that this paragraph in one sense covered the Nyasaland debt, as the whole of that debt had been relented by the Nyasaland Government to the railway companies. On the other hand there was little prospect of the railway companies being able to repay it. Other cases were those dealt with in notes 8 and 11 on page 1 of the memorandum. With regard to the last, Mr. Hale suggested that it would be advantageous to Dominica to pay up while they were getting grants from the Treasury.

Paragraphs 15, 16, 17 and 18.

Mr. Davies said that the Colonial Development Advisory Committee were in general agreement with the

views

views expressed in this part of the memorandum. They wished, however, to make two comments:-

(a) At the foot of paragraph 18 it was not correct to say that the financial position of a Dependency was a strictly minor consideration to them when they recommended assistance to any scheme. The general financial position was a matter which the Committee always took into account.

(b) Whilst the Committee naturally entirely accept the Treasury view of the legal position, they hope that, if the Treasury wish to vary any recommendation the Committee make, the Treasury will refer the matter back to the Committee with a statement of their reasons for wishing the recommendation to be varied.

The above considerations may necessitate a certain amount of redrafting of the paragraphs in question.

Paragraph 22.

Mr. Beckett said that there was some doubt about the possibility of getting the £12,000 British Honduras loan repaid.

(The Hurricane Reconstruction Loan was outside the scope of this memorandum. As it represents an advance from the Local Loans Fund no question of its remittance can be considered.)

Paragraph 23.

(a) Kenya and Uganda

It was suggested to Mr. Hale that this paragraph implied that there was no ground on which the Kenya and Uganda Railway debt could be repaid. Mr. Hale admitted that that might be taken as the Treasury

106

view. It was then suggested that as the Colonial Office were not yet in a position to offer a view on this thesis, the words "in this memorandum" should be added after "suggested", in the third sentence of (a).

High Commission Territories.

In advance of further consideration of the memorandum, it was agreed that the Colonial Development Advisory Committee should be asked to advise what terms should be prescribed for these loans, if no regard were had to the political position.

(c) Mr. Bockett suggested that the British Guiana Boundary Commission expenditure should also be included here. There is at present a note in the Estimates to the effect that the question whether this expenditure will be recovered in whole or in part will be considered later. It would be desirable to get that condition dropped for the future.

Paragraphs 24 and 25.

Tanganyika Territory has always argued that the question of the payment of the debt for war damage reparation, was not postponed for consideration in 1933 but indefinitely. The Territory can, in fact, start paying off her debt, if she lets other services suffer; this is a point on which we should wish for Treasury advice, and which we would like to discuss in April as suggested above.

The Colonial Office has not accepted the provisional conclusion "no case for revision" on the first two items in paragraph 25. The meeting recorded that

that the memorandum is purely a Treasury draft.

Mr. Beckett suggested that the British Guiana/Brazil Boundary Commission expenditure should be added as a further item (d) in respect of British Guiana.

Paragraphs 26-29.

It was agreed that the question of procedure was one for Treasury discretion. Assuming that the question of remission etc., will be dealt with by way of a Resolution, Mr. Hale said that there was now no prospect of getting the matter through the House in March, but that he would very much like to do so with the Supplementary Estimates in July.

15th February, 1938.

C. O.

Mr. Dawe. 15 2.38.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley W.S.P.

Sir J. Shaw

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

38179/19/38. Kenya.

For Mr. Dawe's signature.

Downing Street.

1 March
February, 1938.

Daw. Wade

You will see from the official

DRAFT.

ARMIGEL WADE, C.M.G.,
D.B.E.

Kenya

Fr. Mr. Hale, 21st Jan.
(1)

Fr. Mr. Hale, 16th Feb.
(4)

By bag

2 drafts.

FURTHER ACTION.

Rec'd to
we
V.A.D.

with shares of

(1) & (4)

(3)

despatch of the 22nd February that the Secretary of State decided to refer the question of the Treasury claim to the K.U.R. 25 millions to the Governor before going further.

When we discussed this topic before you left I showed you a semi-official

(1)

letter which I had had from the Treasury, and I believe that you said that you would like to have a copy of it and I accordingly enclose one.

At a recent discussion on the general question of Colonial debts to the Exchequer I drew the attention of the Treasury representati

to

to the passages in Pim's Report about
the K.U.R. debt, and he subsequently
sent me the further letter, of which
I enclose a copy, commenting on Pim's
arguments. I thought that you might
like to have this as indicating the
contentions which we shall have to
meet. Pending the answer to the
Secretary of State's despatch, we do not propose
to take up any argument with the Treasury
on the merits of the claim.

You will see that the enclosed
letters refer to the Railway budget: and
on that we hope to send an official
despatch to the High Commissioner for
Transport without much delay.

4:5

C.O.

38179/18/38. Kenya.

109
5

Mr. Dawe. 15 2.38.

Mr.

For Mr. Dawe's signature.

Mr.

Sir H. Moore.

Downing Street.

Sir G. Tomlinson.

X Sir C. Batesonley. 15 2.38 f

1 March
February 1938.

Sir J. Shackleton.

Perm. U.S. of S.

Privy. U.S. of S.

Secretary of State.

My dear Hale

DRAFT.

H. HALE, ESQ.,

TREASURY.

(4) letter S.22760/3. S.39413/38 of the
18th February about the £25 million

debt of the Kenya and Uganda Railway.

We were interested to see your

reactions to the Pim arguments, but I

do not feel that at this stage I ought

to attempt any comments on the merits

of the case. The Secretary of State

has sent off a despatch to Kenya and

wishes to reserve judgment until he

gets a reply. Please do not think

from this that we are lining up for a

cavilling and narrowly departmental

debate. We are anxious to treat the

subject

FURTHER ACTION.

2 drafts.

subject in a broad way, but you will appreciate that, particularly as Kenya is so political, we must get the Governor's views before we begin.

On the railway budget what we should like from you is an agreement with the proposals put forward in our official letter, subject to a general stipulation that

1-16-17 Jan.

(6) in 38179/14/37

it is given without prejudice to the decision eventually arrived at on the debt question.

If you would like to make the further stipulation that, pending settlement, no further rate reductions should be made without our consulting you, I think that would be reasonable and acceptable. We would rather you did not stipulate

categorically that there should be no reductions, because before we can settle the debt question the railway Administration might, with good reason, wish to reduce some particular rate. But we are not aware

that any further reductions are under consideration at the moment.

The

C. O.

Mr.

Mr.

Mr.

Sir H. Moore

Sir G. Tomlinson

Sir C. Bostwick

Sir J. Shackleton

Privy, U.S. of S.

Party, U.S. of S.

Secretary of State

There is no doubt in our minds that the "third helping" of £158,200

proposed as from the 1st January last, has already been given.

We should like to allocate, without further delay, the surpluses for 1937 and 1938 as proposed in our letter. If, under the decision

eventually reached, some of this has to be handed over to the Treasury, the money will always be there, and, under our general stipulation, it will have to be re-allocated.

If you can meet us on this, may we please have a fairly early answer to our official letter? We want to let the High Commissioner for Transport know the decision as soon as possible.

(Signed) A. J. DAVE

DRAFT.

FURTHER ACTION.

2c 4
TREASURY CHAMBERS

WHITEHALL, S.W.1

Telephone No. : WASHINGTON 124

In any reply

please quote these numbers

S. 28769/3.

S. 29419/38.

18th February, 1938.

My dear Dawe.

During our meeting on the 14th February about Colonial debts, you referred me to paragraphs 395 seq. of Sir A. Fin's Report on Kenya, where he recommends the remission of the £5½ million debt of the Kenya and Uganda Railways and Harbours. I find that very little consideration was given to this recommendation at the time because the position was due for reconsideration in 1938.

The first argument adduced in favour of remission is that because His Majesty's Government were prepared to finance the construction of this railway on grounds of policy other than commercial, irrespective of whether it would pay, they therefore ought not now to make any claim on the revenues of the railway. The argument seems to us to be a complete non sequitur. There is, I think, no question that the original advances were intended to be recoverable, and so far as we are aware forty years elapsed before it occurred to anyone that there was any

inconsistency

A.J. Dawe, Esq., C.B.E.,
Colonial Office.

copy to Dawe &

copy to Dawe (1)

And (5)

inconsistency between insisting to build a railway /
 increase the rate of the commercial interest, and insisting on
 the same rate to pay up the expenditure out of profits if
 profits were realised. If this curious argument were
 accepted as valid, it seems to us that we might be pressed
 to abandon our claim to recover advances in order reasons
 other than the hope of earning a return. Now, too, could
 we justify the acceptance from Palestine and Iraq of pay-
 ments on the part of railways and harbours which originally
 created for our purposes. It is not as if the motive
 for the creation of debts is quite irrelevant to the
 question of their settlement.

It is not our intention to insist to require payment
 would mean building up development and preventing the
 reduction of railway rates. It is of course clear that
 no loan can ever be repaid without some sacrifice on the
 part of the borrower. The whole question is one of degree.
 By postponing the settlement of this debt in the past we
 have recognised that there are occasions when to press for
 repayment would be to require an unreasonably heavy
 sacrifice.

sacrifice on the part of the debtor; but we could not accept
 the suggestion that no sacrifice should ever be required.
 The development of the railway position since Sir A. Phipps
 reported has been more favourable than could have been
 expected, and the liability involved by our grant would be
 less than he imagined. We argue that it is unwise to
 consider conversion of the interest bearing debt until this
 contingent liability has been disposed of, because the
 saving could not be applied to a reduction of railway rates
 to which the Treasury could not in present circumstances
 be expected to consent. Actually rate reductions costing
 nearly £400,000 a year have been conceded since December
 1936, and further rate reductions are under consideration.
 Thus we have not claimed a prior charge on the benefits of
 recovery as we were apparently expected to do, but have only
 modestly asked for a share in the feast before the railway
 users are given a third helping!

You said at our meeting the other day that it
 would be necessary to find a formula to enable consideration
 of the Railway Budget to proceed without prejudice to the
 question of the debt. No doubt you will let us know what
 you propose in this connexion, but we assume that the
 allocation

allocation of the 1937 and 1938 surpluses can await a decision on the debt question. As regards rate reductions it is not altogether clear to us whether the railway users have actually been given the "third helping" of \$158,200 proposed as from the 1st January, 1938. If they have, what is done can hardly be undone; but we think that no further rate reductions (including the \$158,200 if not already in effect) should be given until the question of the debt has been decided.

Yours sincerely,

E. Hale

G.O.

Mr. Duggan 17 8.38.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley 18.2.38

Sir J. Simonson

+ Sir J. Campbell

Party U.S. of S.

Secretary of State

Bowling Street.

22 February 1938
G. R.
12/2

Sir,

(P) Sir Joseph Byrne's confidential letter

of the 15th of October, 1936,

the question of the repayment of the

£500,000 provided by His Majesty's

Government towards the capital cost

of the Kenya and Uganda Railway.

1. As you are aware, this

question is to come up for review this

year, and the Lords Commissioners

of the Treasury have recently requested

that the matter may be brought under

consideration forthwith. It will be

necessary for Parliament to be

informed in the course of the year of

whatever conclusion is reached.

2 DRAFTs

KENYA.

CONFIDENTIAL.

GOVERNOR.

Copy 6 Halse Jennings 3a

FURTHER ACTION.

Rec'd to me to
send copy of (1)
S.O. to Sir H. Moore
V A.B.

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Permt. U.S. of S.
- Secretary of State

DRAFT

*Under the E.A. Act the
 was dependent on the
 money
 was provided.*

the argument that "it is no more
 logical for the Imperial Government to
 demand repayment of the original
 grants for the railway than it would
 be demand repayment of the
 Grants-in-Aid". *The "admission" of
 the Treasury concerned only the fact
 that it would be of assistance,
 either in your covering despatch
 or in the memorandum, you could include
 comment on the following matters:-*

(1) If it is decided that

some payment should be made to the
 Imperial Treasury, should any
 portion of the liability fall
 upon Kenya Government funds
 distinct from those of the Railway
 Administration? If so, what
 steps would you suggest should
 be taken to apportion the
 liability?

(11)

FURTHER ACTION.

In the despatch under reference
 Sir J. Byrne indicated the readiness of the
 Government to meet its case for the
 railway in greater detail should
 the Government in connection with the
 railway grants now be undertaken
 it would be desirable if you could supply
 the Government with a copy of the
 memorandum, the case
 for retention, together with any observations
 the Government may wish to offer.
 The political history of the case was
 set out in Sir Alan Pitt's report and in the
 memorandum of which a copy was enclosed in
 Sir J. Byrne's despatch under reference
 and it will not be necessary for those aspects
 to be elaborated in the memorandum unless you
 think it desirable for any of the historical
 aspects to be further elaborated. I would
 observe with respect to paragraph 17 of the
 memorandum forwarded by Sir J. Byrne, that I
 fear that it will not be possible to sustain
 the

C. O.

Mr.

Mr.

Mr.

Sir H. Moore

Sir G. Tomlinson

Sir C. H. B. ...

Sir J. Shackleton

Parliament, U.S. of S.

Parliament, U.S. of S.

Secretary of State

to His Majesty's Government of the

£5 millions was definitely recognized

in 1955. That admission of liability

remains. My view of the matter on

the broad political plane has now to

take into account the published

recommendation in paragraphs 402 and 403

of Sir Alan Pim's Report that remission

should be favourably considered. To

what extent do you consider that the

situation has been affected by that

recommendation? That, in your

opinion, would be the political effect

in Kenya at present of a settlement under

which some measure of repayment either by

the Railway or by the Kenya Government

or by both was decided upon?

5. I wish to make it clear

that I put the above questions simply

for the sake of argument in order to

clarify the situation and to assist

you in preparing material. Pending

the receipt of your observations I shall

keep

DRAFT

FURTHER ACTION.

*I think I have no work
in any way to limit
your freedom of
comment*

... the ... of the ... I ...
... to achieve a settlement which will ...
... account of the necessities ...
... of the railway ... in view of ...
... of the ... of the ...
you will appreciate
the difficulties inherent in proposal for
remission of the liability.

(teleph) MORTIMER BORE

C. O. 38179/18/381 Kenya

Mr. Dawe. 2.38

Downing Street

Mr.

February 1938

Sir H. Lloche.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir,

Sir J. Stuckburgh.

Parlt. U.S. of S.

Parlt. U.S. of S.

Secretary of State.

(2)

I have etc. to refer to

Sir Joseph Byrne's confidential despatch

No. 112 of the 13th of October, 1936,

on the question of the repayment of the

£5,500,000 provided by His Majesty's

Government towards the capital cost of

the Kenya and Uganda Railway.

2. As you are aware, this

question is to come up for review this

year: and the Lords Commissioners of

the Treasury have recently requested

that the matter may be brought under

consideration forthwith. It will be

necessary for Parliament to be

informed in the course of the year of

whatever conclusion is reached *and the*

3. In his despatch under

reference Sir Joseph Byrne indicated

the

DRAFT

KENYA

CONFIDENTIAL

GOVERNOR.

*Not to go - now
see draft B*

FURTHER ACTION.

the readiness of the Kenya Government to present its case for the remission of the claim in greater detail should be requested to do so in connection with the review of the matter which must now be undertaken. I should therefore be obliged if you could supply me with a memorandum setting out, from the standpoint of the Kenya Government, the case for remission, together with any observations on the question which you may wish to offer. The earlier political history of the case was set out in Sir Alan Pim's Report and in the memorandum of which a copy was enclosed in Sir Joseph Byrne's despatch under reference: and it will not be necessary for those aspects to be re-stated in the memorandum unless you think it desirable for any of the historical arguments to be further elaborated.

If you were that I would be possible to indicate one of the reasons for the remission of the claim, the reason being the Treasury had during the war at a time when the E.A.P. was running at a loss and the Government was in a position to grant a concession for the railway.

to avoid the difficulties of the railway itself.

On looking further at the case (in para 3.) I have suggested at slightly different words.
H.P.

C. O.

Mr.

Mr.

Mr.

Sir H. Wood.

Sir G. Tomkinson.

Sir C. Holtzman.

Sir J. Shackleton.

Parliament, U.S. of S.

Parliament, U.S. of S.

Secretary of State.

DRAFT

FURTHER ACTION.

3/11/24

4. It would be of assistance if, either in your covering despatch or in the memorandum, you could include comment on the following matters:-

(i) If it is decided that some payment should be made to the Imperial Treasury, should any portion of the liability fall upon Kenya Government funds as distinct from those of the Railway Administration? If so, what steps would you suggest should be taken to apportion the liability?

(ii) Assuming, purely for the sake of argument and example, that a compromise was decided upon under which a liability for the repayment of, say, £3,000,000 fell upon the Railway Administration or upon the Kenya Government and the Railway Administration jointly, what arrangements would you suggest should

be made for meeting and eventually extinguishing that liability?

(ii) What would be the financial effect upon the Government of Kenya or upon the Railway if it was decided that such a liability should be assumed? How, for example, would the general financial policy of the Railway be affected in respect of the maintenance of the funds for renewals and betterment and of the general reserve?

(iv) The liability for the repayment to H.M.G. of the £52 millions was definitely recognized

in 1925. [To what extent do you consider that this situation has been affected by the published recommendation in paragraphs 402

and 403 of Sir Alan Pim's Report that remission should be favourably considered

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore
- Sir G. Tomlinson
- Sir C. Hensley
- Sir J. Shackleton
- Presd. U.S. of S.
- Presd. U.S. of S.
- Secretary of State

DRAFT.

Smith
1/10/51
1/10/51
1/10/51

considered? What, in your opinion, would be the political effect in Kenya at present of a settlement under which some measure of repayment either by the Railway or by the Kenya government or by both was decided upon?

5. [I wish to make it clear that I put the above questions merely for the sake of argument in order to clarify the situation. Pending the receipt of your observations I am keeping an entirely open mind upon the subject.]

I have, etc.

FURTHER ACTION.

2

C. O.

Mr. Dawe 17/2/38.

Mr.

Mr.

Mr. G. F. ...

Mr. G. ...

Mr. C. ...

Party, U.S. of S.

Secretary of State.

For Mr. Dawe's signature.

Downing Street,

22 February, 1938.

My dear Hale,

This is in reply to your

(1) letter (S. 28769/3; S. 39419/38) of the

21st January about the Kenya and Uganda
Railway £5½ millions.

We realize that this question has got to be faced this year: and we were in fact just beginning to consider it when your letter arrived. As I said at the meeting on the 14th February, the Secretary of State is starting the ball rolling by referring to the Governor of Kenya on various points which will require elucidation before we can go further. A despatch is going off immediately, and in it the Secretary of State is indicating to the Governor that

2 DRAFT

R. HALE, ESQ., M.C.
(Treasury)

FURTHER ACTION.

the

~~The question may be raised in Parliament~~
~~will have to be informed in the~~
~~before long. It is desirable that the~~
~~course of this year if whatever~~
~~matter should be treated with a certain~~
~~decision is reached.~~

~~a. edito.~~ We are anxious, as no doubt

you are too, to bring the question to a
clear issue with the least possible delay.

In the meantime the Railway has

got to go on working, and the Secretary of

State would like to let the High Commissioner

for Transport know that the Estimates for this

year and the other proposals referred to in

our official letter of the 17th January are

approved. We should be glad to know at your

early convenience whether you wish to raise

any objection to this. It will naturally be

understood that the Railway's immediate

financial proposals must be subject to the

decision reached about the £5½ millions.

That is clearly a big matter of policy and

the decision on that will override everything.

(As this question was new to me, may

I add a word of thanks for the helpful review

of

(6 in 38179/16/37)

C. O.

Mr.

Mr.

Mr.

Sir H. Main

Sir G. Tomlinson

Sir C. Bannister

Sir J. Sturges

Prime, U.S. of S.

Parli. U.S. of S.

Secretary of State.

DRAFT.

of it which you gave in your letter. I
was standing in perplexity on the brink
of the Inferno when you like Virgil
emerged from the shade and guided my
steps into the right path. The
references in paragraphs 395-404 in
Pim's Report, of which I handed you a
copy the other day, may serve as a kind
of pendant to your review. You will see
what he brings forward some interesting
historical ^{arguments} ~~ones~~ and suggests that,
looking at the question in that setting,
there is a case for remission.)

YRS SINCERELY

(Signed) A. J. DAWE

PS. The above was dictated
before I received your further
letter of the 18th Feb. I will
answer that in a day or two

FURTHER ACTION.



E



TREASURY CHAMBERS,
WHITEHALL, S.W.1.

201

Telephone No. WHITEHALL 1234

In any reply
please quote Refd. No.

S. 22769/3

S. 39419/38

27 January, 1938

My dear Dawe,

Your official letter of the 17th January ^(33479/16/3) on the subject of the Kenya and Uganda Railways and Harbour is discreetly silent as to the debt of £5,502,592 due to the Exchequer in respect of the capital advanced under the Uganda Railway Acts, 1896 and 1902, and a similar discretion leads us to broach the subject semi-officially rather than officially. For broached I fear it must be. As you know, the question of repayment is due for reconsideration this year, when Parliament will have to be informed of whatever conclusion is reached, and in these circumstances the proposals made in your letter cannot be considered in isolation from the question of this debt.

2. It may help if I review very briefly the history of this matter. It was originally stipulated in 1896 that the surplus profits on the railway should be handed over to the Exchequer until the advances were repaid and thereafter

until

A. J. Dawe, Esq., O. B. E.,
Colonial Office.

Copy 1. Wade 6
... ..
... ..
... ..

until otherwise determined. In 1908, however, the Treasury agreed that the profits should be paid over to Kenya Colony, thus reducing and finally extinguishing deficiency grants, and the Colony continued to appropriate the railway profits to help general revenue when deficiency grants came to an end. Up to the end of 1920/21, the railway had contributed £1,642,552 to the Colony's revenue though no provision had been made for renewals. The Treasury claim to repayment was received in 1921, and though at first contested by the Colonial Office it has since been admitted in principle. The matter was raised before the Public Accounts Committee in 1924, when the Committee asked to be "assured that it is formally recognised beyond the possibility of question that the Colony is indebted to H.M. Government in respect of the sum originally expended on the railway" The Colonial Office letter of the 30th April, 1925 (17320/25) stated that liability for repayment was recognised as one falling on the Railway Administration itself. See also Article 19 of the Order in Council of the 16th December, 1925.

5.

5. In the Treasury letter of the 4th January, 1924, (S.21023) it was proposed that as from the 1st April, 1921, when the finances of the Railway Administration were separated from those of the Colony, one half of the balance of the net revenue account should be paid to the Exchequer and the other half to the credit of the Renewals and Betterment Fund; and that in the event of works being required in excess of the balance of the fund, the sum required should be provided on the Kenya Estimates, in recoupment to the railway of former drafts on profits. (The word "profits" was I think a misnomer. Renewals are properly regarded as part of working expenses, and you cannot therefore speak of a profit until you have provided for them. Part at least of the "profit" taken by the Colony was not really earned). At that time, however, certain proposals were under consideration for financing development in East Africa with a view to relieving unemployment, and the Secretary of State represented to the Chancellor that "the objection to assisting East Africa and requiring it at the same time to surrender money to the Exchequer (which he was also urging in connexion with the war debt) applies very

forcibly

forcibly to this case", and urged that development should be fully secured before repayment began. In reply to these representations the Chancellor agreed that the question of repayment should be postponed for ten years. The arrangements made were confirmed in official correspondence (C.O. letter of 18th February, 1924 (4305/24) and its enclosure, and so far as concerns the railway, the Treasury letter of 18th March, 1924, (S.21025))

4. When the matter came under consideration again in 1935, repayment was clearly impossible, as the railway was at that time in effect financing deficits by raiding the renewals fund. We were therefore able to agree without difficulty to postpone the question for another five years. (C.O. letter of 31st March, 1935 (4040/35) and Treasury (S) reply of 10th May, 1935 (S.22769/3). (10)

5. This period has now expired and the picture today is a very different one. The deficit of £114,581 in 1932 has been followed by surpluses of £262,818, £386,249, £347,161 and £379,660 in 1933 to 1936, and for 1937 you expect a surplus of £479,150. But these figures alone

understate

understate the improvement. Rate reductions costing 123 £239,000 were given in December 1935 and during 1936, and further reductions costing £155,000 as from the 1st January, 1937 (see p.74 of General Manager's Report for 1936). The real improvement during the five years 1932 to 1937 therefore seems to be from minus £114,581 to £273,000 (479 plus 239 plus 155), or very nearly £1 million.

The general policy has been to allocate these surpluses, in so far as they are not required for reserves, to rate reductions and betterment, and if the £5½ million debt did not exist, there would be no objection in principle to continuing this policy. But as it is we are bound to ask at what point in this process you propose to make provision for the repayment of the debt to the Exchequer.

7. You will no doubt have had a copy of the memorandum which formed the enclosure to my letter of the 8th January to Calder, dealing with the general question of Colonial debts to the Exchequer. The proposals in that memorandum will, I hope, be found to deal sympathetically with the weaker debtors, but the amount which we should have to ask Parliament to remit is formidable.

As

As you know, those proposals have not yet been submitted to higher authority here, so that I cannot say what view will be taken of them. But the prospects of their being found acceptable seem to me to be favourable only if those debtors, who are in a position to pay something, now begin to do so. On present information I think that we should be bound to take the view that the Kenya and Uganda Railways and Harbours are now in a position to start repayment. Possibly this was in your mind when you left an unallocated balance in your proposed disposition of the expected surplus for 1958.

6. I enclose an extra copy of this letter in case you wish to pass one to Calder.

Yours sincerely,

Ehale

*Sent to Mr. Kelly
W.B.*

Mr. Dawe 41

Mr. Clauson.

The Treasury are claiming from Kenya £5,500,000, representing the capital advanced by the British Government for the original construction of the Kenya-Uganda Railway.

We have to prepare a case for resisting the claim.

I should be very grateful if you could advise us whether, among the other arguments which will be used, it would be reasonable to advance the thesis that it would pay this country to write-off the debt because of its general trade interest in fostering the prosperity of Kenya.

A. Dawe

5.2.38.

I think that it would be dangerous to embark on any discussion of trade matters in this connection. Kenya which receives very valuable preferences in this country is neither backward in asking for more given no preference in return. It is true that she is obligated by international obligations entered into not by her but by the U.K., but she is very vulnerable to the argument that if the U.K. has £5 million to spare for the Col. Engine, she will in wisdom to invest it to some place which can ensure ~~that~~ by granting preferences that the profits accrue to the Engine.

If you want to use the argument at all it will have to be via the tortuous route that if Kenya had to find this money taxation would be increased to such a level that it would be

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A. Mawe

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I think that it would be dangerous to embark on any discussion of trade matters in this connection. Kenya which receives very valuable supplies in this country is not backward in asking for more goods no preference in return. It is true that she is prevented by international obligations entered into not by her but by the U.K., but she is very vulnerable to the argument that if the U.K. has £5½ million to spare for the Col. Engine, she would be wise to give it to some colony which can secure, ~~and~~ by granting preference, that the benefits accrue to the engine.

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A. L. H. Clauson

7/1/28

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A. L. Lawson

7/1/25

COLONIAL DEBTS TO THE EXCHEQUER.

I. General

Debts due from Colonies may be divided into three classes.

- (1) Loans in aid of administration, &c.
- (2) Developmental loans, i.e. loans from C.D.F. or for purposes for which loans, if made today, would be made from C.D.F.
- (3) Loans for other purposes.

The following table shows the outstanding debts, other than those arising from C.D.F. loans, as at 31.3.37, which are to be considered in 1937 or 1938 (underlined in red) or for which terms have not yet been prescribed, classified as indicated above. There is no intention to Parliament to review any cases except those underlined in red, but it would be desirable to clear up the whole position.

| <u>Colony.</u> | <u>Amount due in respect of</u> | | |
|--------------------|---|---------------------------------|----------------------------------|
| | <u>Loans in aid of administration &c.</u> | <u>Developmental loans.</u> | <u>Loans for other purposes.</u> |
| | £ | £ | £ |
| Kenya & Uganda | - | <u>5,502,592</u> | - |
| Tanganyika | (<u>448,095</u>) | - | - |
| | (<u>449,506</u> ¹) | - | <u>177,909</u> ² |
| Nyasaland | - ³ | - | - |
| British Somaliland | 236,000 | - | <u>42,000</u> ⁴ |
| Swaziland | 243,900 | 39,500 ⁵ | - |
| Bech. Prof. | 110,000 | - | - |
| Trans-Jordan | - | - | 31,072 odd ⁶ |
| Antigua | 30,000 | - | - |
| British Guiana | (<u>514,500</u>) | - | - |
| | (<u>35,000</u> ⁷) | - | 39,882 odd ⁸ |
| British Honduras | 149,500 | - | - |
| Dominica | (<u>68,000</u>) | 3,750 ¹⁰ | - |
| | (<u>22,140</u> odd ⁹) | <u>19,899</u> odd ¹¹ | - |
| Montserrat | 27,000 | - | - |

- 1. For deficit on current account of railways.
- 2. For war damage restoration.
- 3. Owe £1,164,021 odd, plus £321,494 odd in respect of interest accumulated (simple) at 5% since 1930.
- 4. For war expenditure on local forces. See paragraph 3 below.
- 5. For improvement of communications.
- 6. For share of Ottoman public debt. (The first of a number of annual payments)
- 7. For railway and steamer renewals.
- 8. For loans to planters for relief of unemployment.
- 9. For relief of distress caused by hurricanes. This money was expended on food relief and repair of actual damage. It was not lent to private persons.
- 10. For "development of resources of island", i.e. Government Fruit Farm.
- 11. For loans to cultivators (watts scheme).

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| | £ | £ | £ |
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| British Somaliland | 236,000 | - | - |
| Swaziland | 243,900 | 39,500 ⁵ | - |
| Bech. Prot. | 110,000 | - | - |
| Trans-Jordan | - | - | 31,072 odd ⁶ |
| Antigua | 30,000 | - | - |
| British Guiana | (514,500) | - | 39,882 odd ⁸ |
| | (35,000) ⁷ | - | - |
| British Honduras | 149,500 | - | - |
| Dominica | (68,000) | 3,750 ¹⁰ | - |
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- 10. For "development of resources of island", i.e. Government Fruit Farm.
- 11. For loans to cultivators (Watts scheme).

3. The debt of £42,000 due from Nyasaland in respect of war expenditure on local forces forms part of a much larger total. Agreements were made from time to time during the war as to the incidence, as between the East African Protectorates and the Imperial Government, of war expenditure in East Africa. The approximate liabilities of the three Protectorates under these agreements were examined by an inter-Departmental Committee after the war and were found to be as follows:-

| | |
|-----------|-----------|
| | £ |
| Kenya | 1,408,016 |
| Uganda | 648,988 |
| Nyasaland | 736,541 |

In addition, Nyasaland is liable for £220,449, including the sum of £42,000 appearing in the table in paragraph 2, representing sums which under agreed arrangements should have been met from Nyasaland funds but owing to the Protectorate's financial circumstances were met from Imperial funds, on the understanding that the question of repayment would be dealt with in connection with the question of the liquidation of the Protectorate's war expenditure liability generally. The total liability of Nyasaland on war account is therefore £958,990. Uganda has paid £115,000 (in 1923) on account of the above liability, reducing the liability of that Protectorate to £533,989. These debts, and also that arising from the War Loan of £400,000 to the Government of Newfoundland, fall somewhat outside the scope of the present memorandum.

II. Loans in aid of Administration etc.

4. Past practice has not been altogether consistent.

The following have always been grant aided:-

St. Helena (from pre-war times)

Trans-Jordan (from 1921)

St. Lucia (from 1927)

The following used to receive grants, but have latterly been loan aided:-

Dominica : grants 1886-31: loans since 1932, latterly described as non-interest bearing.

Bech. Prot. : grants 1933 and 1934: thereafter loans, in order to bring it into line with Swaziland.

The following were loan aided, but have latterly been grant aided:-

Newfoundland : loans made in 1932 and 1933 were converted into free grants by Treasury Minute of 22.1.34. Since then all assistance from the vote has been by way of grant, and no loan is outstanding.

British Somaliland

(1) Military expenditure - met by loan until 1924 when money was voted to enable repayment to be made and no loan is therefore outstanding.

(2) Civil expenditure - assisted by loan until 1933 inclusive. No assistance 1934 and 1936: grants in 1936 and 1937. Previous loans still outstanding.

British Guiana : loans 1930-1936 (except 1934): grant 1937. Previous loans still outstanding.

The following have been loan aided from the outset:-

Nyasaland : from 1921 - interest accruing at 5% simple.

Swaziland : from 1928.

Antigua : from 1930 - loans latterly described as non-interest bearing.

British Honduras : from 1931. It has been decided that for 1938 provision will be by way of grant.

Montserrat : from 1933 - loans latterly described as non-interest bearing.

5. There are three ways in which debts arising out of loans in aid of administration might conceivably be dealt with:-

- (a) to remit them all;
- (b) to retain them all; or
- (c) to remit in part.

6. All these courses are open to objection in varying degrees. As regards (a) the Treasury feel that in principle the expenses of administering a colony should be charged upon the revenue of that colony and that the taxpayer of this country is entitled to recover assistance given towards such expenses. Assistance having been accepted in this form by a number of dependencies, remission might not be granted unless repayment is finally impossible. Moreover total remission would be somewhat unfair to territories which have repaid in the past: and the Dominions Office would presumably prefer that the High Commission Territories should not be wholly relieved of debt.

7. To remit nothing is a policy which the Colonial Office would presumably oppose: and even from the Treasury point of view it is open to grave objection. The accumulation of large debts which there is no prospect of collecting and about which nothing can be done involves the risk of creating the impression that nothing need be done about any debt to the Exchequer. Debts to the Exchequer should be realities, and any debts which have, so far as can be foreseen, become finally irrecoverable should be written off for fear that their unreality may pervade the whole field.

8. The objection to partial remission based on grounds of varying capacity to pay lies in the element of prophecy

involved and in the great difficulty of finding a basis for differentiating between different dependencies which may hereafter be nullified by unforeseen developments. But it is not possible to give any remission without running some risk of foregoing repayment that might otherwise have been obtained. The risk has already been run in so far as assistance has already been given by way of free grant. No new principle is therefore involved in partial remission.

9. A basis for partial remission may be found by laying down a limit of general application to the amount of assistance towards the expenses of administration of which repayment will be looked for. A debt arising out of such assistance is in the main unproductive, and in practice it is thought that the amount of such debt likely to prove recoverable from a colony which has been in budgetary difficulties for some years is not likely to exceed a year's revenue. The general rule might therefore be that the amount of assistance by way of loan towards the expenses of administration which is outstanding at any one time should not exceed a year's revenue and that if further assistance is required after that limit has been reached it should be given by way of grant.

10. If this rule were applied universally, it would be necessary to give assistance towards the expenses of administration by way of loan up to a year's revenue in those cases in which such assistance has hitherto been wholly by way of grant or in which no debt arising from such assistance is outstanding, as in the cases of Newfoundland, Trans-Jordan, St. Lucia and St. Helena. It will no doubt be agreed, however, that the prospect of recovery in these cases does not at present justify departure from the existing practice. The question accordingly arises whether there are other dependencies, which by the application of the general rule

suggested in paragraph 9 would be left with debt in respect of loans in aid of administration, but which are closely comparable with any of the four cases mentioned. In the case of Trans-Jordan, the inadvisability of creating unproductive debt arises from the very limited prospects of development in a country deficient in rainfall and natural resources. Similar conditions exist in an even stronger degree in British Somaliland. In the case of Newfoundland, the difficulty arises not from a lack of development prospects but from the exceptionally heavy burden of unproductive debt contracted before assistance was obtained from the Imperial Exchequer. The existing debts of Nyassaland, British Guiana and British Honduras, while in the last two cases some burdensome proportionately than that of Newfoundland, are in all cases so much greater than those of any other loan or grant-aided territories as to place them in a special category, justifying similar treatment to that already accorded to Newfoundland.

11. The basis suggested in paragraph 9, varied as proposed in paragraph 10, would lead to the following result:-

| | <u>Debts in respect of loans in aid of administration at 31.3.37.</u> | <u>of which</u> | <u>to be</u> | <u>to be</u> |
|--------------------|---|-----------------|------------------|------------------|
| | | | <u>remitted.</u> | <u>retained.</u> |
| Tanganyika | £ 897,599 | £ | | £ 897,599 |
| Nyassaland | 1,164,021* | 1,164,021* | | |
| British Somaliland | 236,000 | 236,000 | | |
| Swaziland | 243,900* | 93,900* | | 150,000 |
| Bech. Prot. | 110,000* | | | 110,000* |
| Antigua | 30,000* | | | 30,000* |
| British Guiana | 549,500 | 549,500 | | |
| British Honduras | 145,500 | 145,500* | | |
| Dominica | 50,140* | 40,140* | | 10,000 |
| Montserrat | 37,000* | 7,000* | | 30,000 |

*excluding interest, as to which see below. It would be desirable to await for the Financial Commissioner's Report before reaching a final decision.

*will be increased by amounts issued subsequently to 31.3.37.

12. The above table assumes the application of the basis suggested in paragraph 9 to the High Commission Territories without modification. It is appreciated that the form in which assistance is given to these territories has to be considered with reference to political considerations. The questions that have to be considered seem to be:-

(a) Are the Union Government likely to be deterred from pressing for transfer by the indebtedness of two of the Territories?

(b) In the event of repayment being demanded from the Union Government in any future negotiations for transfer, would the Union Government be likely to meet the demand?

(c) In the event of repayment being refused, how far could this refusal be used as a ground for withholding transfer if other obstacles had been removed?

These questions are primarily for the Dominions Office, but in considering them it has to be borne in mind that it will be necessary to explain to Parliament the general principles on which this review is based, and it would hardly be possible to treat the High Commission Territories less favourably than other dependencies without explanation.

13. A further question arises as regards interest. Indications have been given to Tanganyika that the territory's debt will be regarded as non-interest bearing, and several of the others are so described. It would be difficult to differentiate in this matter, and it would seem best to treat all debts in respect of loans in aid of administration as non-interest bearing. This will involve writing off the £321,494 due from Nyasaland for interest, but this is irrecoverable if anything is.

14. In order to avoid misapprehension, it should be explained that the general rule suggested in paragraph 8 above

is intended to apply to unproductive debt. Apart from developmental loans (which are dealt with below) advances have on occasion to be made to loan- or grant-aided colonies in order that they may be relent at interest to private borrowers (e.g. loans to cultivators in Trans-Jordan) or for purposes which produce a clearly identifiable return in the form of specific revenue or specific savings (e.g. conversion of the Stann Creek railway in British Honduras into a road, which will produce specific savings exceeding the loan charges involved). In such cases it is not intended to depart from the practice of making the advance by way of loan, even in the case of a colony otherwise grant-aided, terms being prescribed at the outset, and not left for later determination.

III. Developmental Loans.

15. The table in paragraph 2 does not include loans from the Colonial Development Fund. But loans made from the Colonial Development Fund are repayable to the Exchequer and it is not considered that a general review of Colonial debts to the Exchequer can ignore that part of the indebtedness which arises from developmental loans made from the Colonial Development Fund. Such loans are of particular importance in the cases of British Guiana and Newfoundland. In the former case it has already been suggested that relief might be given in respect of Colonial Development Fund loans. In the case of Newfoundland the considerable debts incurred on Colonial Development Fund account for somewhat disappointing results and have given rise to some anxiety.

16. In the case of British Guiana, the Colonial Development Advisory Committee were consulted and stated that they would have no objection to a waiver of the loans made from the Colonial Development Fund if the Treasury regarded it as indispensable for any comprehensive scheme for placing the Colony's finances on a proper footing (C.D.A.C. 2069 of 5.11.36). The Treasury, however, felt some hesitation in acting on this letter, and it was suggested to the Secretary of the Committee that what was required was a recommendation that the loans in question should be converted into grants. The latter, however, took the view that the Treasury and the Secretary of State are responsible for general budgetary assistance to Colonies. The Committee, he said, in deciding whether to recommend assistance from the Fund by way of loan or grant, consider primarily the circumstances of the individual scheme, the general financial position of the dependency being a strictly minor consideration.

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17. The Treasury would be prepared to accept this view as to the respective responsibilities of the Committee on the one hand and the Treasury and the Secretary of State on the other. Unless, however, it is considered that the decision whether an advance for development should be made by way of grant or loan should be based wholly on the nature of the scheme without reference to the general financial condition of the Colony, this view appears to involve reconsideration by the Colonial Office and the Treasury of recommendations made by the Committee on this point. Legal advice has been taken on the matter, and the advice received is that under the Colonial Development Act the decision whether an advance should be by way of grant or by way of loan is for the Treasury, and that it is not necessary, in order to comply with the Act, for the Committee to make any recommendation on the question whether the advance should be by way of grant or by way of loan.

18. Notwithstanding the legal position, the Treasury would be glad to continue to receive from the Committee recommendations as to whether advances should be by way of grant or by way of loan. It is suggested, however, that in future the procedure should be as follows. The recommendation of the Committee as to the form of the advance would be based solely on the nature of the scheme. The Treasury would then consider the matter further in relation to the budgetary condition of the Colony and might in certain cases make an advance by way of grant where the Committee had recommended a loan. It should be recognised that such a decision was in no way to be regarded as setting aside or overriding the Committee, but was based upon considerations regarded by the Committee themselves as somewhat outside their purview.

19. Such discretion, if assumed by the Treasury, would be very sparingly exercised. It will be appreciated, from what is said in paragraphs 9 and 14 above, that the limit of a year's revenue is intended to apply only to unproductive debt, and further that there is no question of making advances otherwise than by loan cases in which the advance is to be repaid at interest or to be spent on assets directly productive of revenue or savings. There is however an intermediate class of debt which is neither unproductive in the sense in which loans in aid of administration are for the greater part unproductive, nor directly productive of revenue or savings. Loans for road construction are typical of this class of debt. In connexion with the reconstruction programme in Newfoundland the Secretary of State, with the concurrence of the Treasury, agreed that, in view of the heavy burden of unproductive debt, capital expenditure should not in future be met by borrowing except for self liquidating projects. In Section II of this memorandum, it is proposed to treat Nyasaland, British Guiana and British Honduras similarly to Newfoundland in regard to loans in aid of administration on account of the similarity of the debt position. It is suggested that for the same reason these territories might also be treated similarly in regard to borrowings for purposes of a developmental character which are not directly productive of revenue or savings.

20. The application of this proposal to the existing debts of the four territories in question would involve remission of the following debts:-

| <u>Territory</u> | <u>Amount outstanding at 31.3.37</u> | <u>Purpose</u> |
|------------------|--------------------------------------|---------------------------------|
| | £ | |
| Newfoundland | 100,000 | Fishery development. |
| " | 250,000 | Roads and Bridges |
| " | 85,000 | Land Settlement |
| " | 3,000 | Beaver Farms and Game Reserves. |
| British Guiana | 157,279 | Surveys, Roads and Bridges. |
| " | 31,856 | Dredger |
| British Honduras | 19,600 | Drainage of Belize |

Nyasaland has no debt on Colonial Development Fund account.

21. The total outstanding at the 31st March, 1937 in these cases was thus £640,735, but not all these schemes are complete. The following amounts remain to be issued:-

| | | |
|------------------|----------|--|
| Newfoundland | £113,000 | (and probably more) for roads and bridges. |
| " | £15,000 | for land settlement. |
| British Honduras | £21,800 | for the drainage of Belize. |

Thus the total sum involved is of the order of £800,000.

22. The following loans to these Colonies would stand as being directly revenue producing.

| | | |
|------------------|---------|---|
| Newfoundland | £89,130 | for railway development. |
| " | £34,473 | relent to Labrador Development Co. |
| British Guiana | £3,000 | for new markets, New Amsterdam. |
| British Honduras | £12,000 | for harvesting and marketing cohune nuts (relent to a Company). |

23. The following questions remain for consideration.

(a) The debt of £5½ million due from Kenya and Uganda. The present memorandum is concerned mainly with principles and any attempt to deal with this debt would overload it. It suffices here to remark that no principle has been suggested that would point to a remission of any of this debt. The question of its repayment can therefore be dealt with

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separately on its merits.

(b) The debts of the Bechuanaland Protectorate and Swaziland on Colonial Development Fund account, together with those arising from the advance to the latter from the Vote for the improvement of communications. Most of these debts are on terms to be prescribed. It is considered that it would be better to prescribe terms now, repayment being then charged against the territories' budgets and operating to increase the advances required in aid of administration. This course would not in itself relieve the territories unless it were also decided to give assistance towards the expenses of administration in excess of a year's revenue by way of grant. The advantages seen in the course proposed are (a) that there would then be only one debt to consider from the political point of view, (b) that the prospects of recovering these debts from the Union Government in the event of transfer would be greater if repayment was already in process than it would be if no terms had been fixed. (c) The advances from the Vote to Dominica for development purposes, i.e., £6,750 for the Government Fruit Farm, and £19,899 odd for loans to cultivators. If these loans had been made from the Colonial Development Fund, terms would have been prescribed at once, and no reason is seen to treat these loans differently. It is therefore proposed to prescribe terms now.

IV. Loans for other purposes.

24. Tanganyika: £177,909 for war damage restoration.

There appears to be little ground for treating the debt differently from that in respect of the loan in aid of administration.

Nyasaland: £42,000 in respect of war expenditure.

This cannot be considered separately from the other war liabilities referred to in paragraph 3.

Trans Jordan: £31,072 in respect of Ottoman Public Debt.

This must await a general settlement of the Palestine problem.

British Guiana: £39,882 odd in respect of unemployment relief on sugar estates.

This money was advanced to sugar planters, but no security was taken apart from an undertaking by the Colony to impose special taxation when the industry was again prosperous, of which half the proceeds were to go to amortise the debt. This debt is sui generis and its treatment does not affect, and is unaffected by, what is done in other cases. There seems to be no need to consider varying the terms on which it was incurred.

V. Provisional conclusions on Sections II, III and IV.

25. Kenya and Uganda. No case for remission. The question whether terms should be prescribed in 1938 can be considered separately.

Tanganyika. No case for remission, except as regards interest. In the Treasury view Tanganyika should be in a position to commence repayment.

Nyasaland. There will have to be a drastic write-off here, but the Report of the Financial Commissioner must be awaited before the final decision is reached.

British Somaliland. Write off.

Swaziland and Bech. Prot. The Dominions Office might consider further how big a claim they wish to pile up against the Union. In any case terms should be prescribed in the Colonial Development Fund cases and for the £39,500 owed by Swaziland in respect of improvement of communications.

Trans-Jordan. Await general settlement of Palestine problem.

Antigua. No remission. Continue loans in aid till debt reaches £70,000.

British Guiana. (a) Write off loan in aid of administration, including that for railway and steamer renewals. (b) Write off Colonial Development Fund loans, except those that are directly revenue producing. (c) Loans to planters (£39,382) should stand and be dealt with under the original arrangements.

British Honduras. As for British Guiana (a) and (b).

Dominica. Reduce debt in respect of loans in aid of administration to £50,000 and remit £22,140 lent for hurricane relief. Prescribe terms for the other debts, which are of a developmental character. Further assistance in aid of administration should be by grant.

Montserrat. Reduce debt in respect of loans in aid of administration to £20,000. Further assistance in aid of administration should be by grant.

Newfoundland. Remit such Colonial Development Fund loans as are not directly revenue producing.

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VI. Procedure.

26. While the extent to which the Treasury can remit a loan or other debt due to the Crown without Parliamentary authority has never been precisely defined, there can be no shadow of doubt that any remission of the extent now contemplated requires Parliamentary authority. The failure to obtain Parliamentary authority for the remission of the loans made to Newfoundland in 1932 and 1933 gave rise to unfavourable comment by the Comptroller and Auditor General and the Public Accounts Committee.

27. The obvious way of obtaining Parliamentary authority is by the vote of a grant which can be utilised for repaying the loan and this procedure was adopted when previous loans to British Somaliland for military expenditure were remitted. But it gives rise to serious difficulties in the present case. In the case of loans from Votes, the sums repaid by Colonies can be appropriated in aid of the Vote, so that the net vote would be for a token sum and no budgetary disturbance would be created. Even so, comparisons between the gross amounts voted for Colonial and Middle Eastern services in different years would be seriously upset if so large a sum as £2 million were voted for repayment in 1938. In the case of loans from the Colonial Development Fund, however, it is considered that the provisions of Section 1 (8) of the Colonial Development Act, which require that any sums received by the Treasury by way of interest or repayment shall be paid into the Exchequer, make it impossible to deal with the recoveries as appropriations in aid. To proceed by way of Vote in the case of Colonial Development Fund loans would therefore involve a net Vote of about £800,000, for the purpose of repaying the Exchequer a course which would be open to very strong objection.

28. Apart from these technical points, there is something artificial in the use of a vote for dealing with a general review involving such large amounts, and it is considered that a more appropriate procedure would be to take an ad hoc resolution approving proposals in a Treasury Minute covering both voted loans and Colonial Development Fund loans. This course would be justified not so much by the nature of the proposals as by their magnitude; i.e., it would not preclude us from dealing with individual and smaller cases by a vote in future. The resolution would probably have to be taken first in Committee and then reported.

29. As regards the time-table, the Resolution could be taken at any time of year, but it would probably be most convenient to take it in time allotted to Supplementary Estimates, i.e. either in March or July. In either case the Estimates for 1938 will already be published before the Resolution can be taken and the question whether any change should be made in the Estimates must be considered with this in view. Under existing practice the assistance towards the expenses of administration in the cases of the High Commission Territories, Dominica and Montserrat would be shown in Part III of the estimates as loans, as well as the payment to Nyassaland in respect of the Trans-Zambesia Railway Guarantee. If, however, the proposals made above were adopted, these payments would be grants. (In the case of the Bechuanaland Protectorate, the payment might be part grant and part loan.) There may be objection either to presenting the Estimates in a form inconsistent with proposals under consideration (if no change is made) or to anticipating Parliamentary approval of the main scheme (if a change is made). On the whole it would probably be best to make no change in the 1938 Estimate but to add to the footnote appended to the

A group of Subheads in Part II of the Colonial and Middle Eastern Services Estimate a statement to the effect that the review of Colonial debts to the Exchequer, which is now being undertaken, may involve changes in the form (i.e. grant or loan) which assistance is given in certain cases. A similar footnote could be appended in Part III of the Dominion Services Estimate to Subheads E and F.

Treasury Chambers,
8th January, 1938.

(1) Provision of Treasury Estimate
(2) Remains for... they agree to...
(3) ...