

1933

3166

CO 533/436

KENYA

1933

3166

Milindini Harbour.

Previous

15676/29

Mr Greestone

13

306

Legitim

✓

10/6

Room 309

7/6

Mr Greestone

17

207

Room 309

2/6

3/6

Mr Greestone

3/2

Mr Flood

4

R 297

Subsequent

Key 297

9/5

Mr Greestone

18/5

Mr Flood

10

Mr Roberts Way

20.

Mr Flood

29

Mr Roberts Way

30.

Mr Flood

31

Sir C. Bostanley

31.

R. 309

11/6

248

1/6

197

5/6

General Debt

1/6

297

10/6

Room 309

10/6

NOTE

- 2  
5 July 33.
1. Crown Agents \_\_\_\_\_  
 Trans. case with General Manager K.V.R. Harbour &  
 Burchells regarding the interpretation of Clause 2 of Agreement  
 between H. Cms. Transport & the African Wharfage Co. Ltd. & Another  
 25. 5. 33
  2. C. Agents \_\_\_\_\_  
 This is an interesting point

Here is a copy of the Agreement  
 clause 24 - 10/107/27 K. and the  
 definition of cargo appearing in clause  
 2(A) ~~and~~ seems to have been  
 suggested by Sir E. Gigg vide 18 in that  
 file and the address minute of 5/4/27.  
 Mr. Roberts-Wray and G.D. should  
 see for us for their part.

J.H.S.P. 10/5/33

Mr Roberts-Wray

The point is: Is half manufactured  
 cement (i.e. not ground to powder) a 'mineral' or is it  
 a 'manufactured article' and as such under 'general  
 cargo'. If the latter the African Wharfage Co. has the right to  
 handle it. If the former they haven't.

J.L.S. Hunt  
 10.5

Mr. Flood.

I am not sure whether I am asked for an  
 opinion on this very difficult point, which depends  
 upon the answers to the following questions: -

- (1) Are the substances (apparently chalk and  
 clay) of which cement clinker is made minerals? I  
 am not sure, but assuming, as is probable, that  
 they are,
- (2)

(2) Does "mineral" in the agreement exclude mineral substances which have been subjected to a process of manufacture? Again, I think probably so, at least where the result is substantially different from the raw material;

(3) Is cement clinker so "substantially different"? I do not know sufficient about the process of manufacture to say, but it seems from Messrs. Burchells' letter that it is.

If, as Burchells say, the cement clinker is not a mineral, there is no more to be said, but I suppose that it is: then further questions arise, i.e.

(4) Do the words "in bulk" relate only to "oils", or also to "coal, coke, patent fuel, minerals"? It is impossible to say for certain, but I think they refer to all the substances mentioned, and if I am correct in this, then

(5) Would the cement concerned be "in bulk" and therefore within the exception? It is strange that the agreement mentions coal as well as minerals. <sup>Having regard especially to this</sup> ~~As it does say~~ it is not impossible to read "minerals" as part of a compound noun "patent fuel minerals", but I think this is hardly reasonable, even if there are such things.

If an opinion is wanted, I am inclined to agree with Messrs. Burchells, but I do not feel nearly so certain as they do.

*Robert H. Gray* 26.5.53.

Mr. Roberts-Gray:

I am sorry that you were put to so much trouble because I had not intended to ask your opinion since we are not invited, as yet, to express one: the thing was only sent to you for information.

On the general ground I think that Burchells were probably right in their opinion that cement clinker is a manufactured article and cannot fairly be described as a mineral. With regard to the question of the words "in bulk", from the agreement as finally concluded it would appear possible to contend that it covered all the articles specified, i.e. coal, coke, patent fuel, minerals and oils: but if the original draft had been looked at - it is to be found at No. 16 on file 10107/27 (see clause 17(a) flagged B) - the term cargo was there defined as not including "oils in bulk, nor coal, coke, patent fuels or minerals in bulk". From this it would look as if things mentioned in bulk were oils and "minerals": then in No. 18 it was suggested that "oils in bulk, coal, minerals, soda, etc." should be excluded from the terms of the agreement (flagged C). In a telegram sent to Kenya (No. 24, flagged F.) it was stated that "oils in bulk, coal, minerals, soda, etc. excluded from terms of agreement and lighterage left free".

These would lend a good deal of colour to the theory that the words "in bulk" only apply to oil and in practice there is a good deal to be said for this, because oil in bulk is a very different commodity from oil in case. On the other hand the other things mentioned are all articles which would be imported in bulk. It is customary, I believe, to carry coal, patent fuels,

and

*I think the words were only meant to qualify oil. The statement issued: NO 41 on 10/07/52 says "oils in bulk, coal, minerals, soda etc." to be excluded.*

*But see also 18 & 24 & the draft in NO 10 clause 17(a)*

*If it isn't a mineral the point doesn't arise but it couldn't be in bulk anyway for the reason given.*

*There aren't, think.*

and so on, simply in bulk and not to bag them. We have always understood that cement clipper was in fact carried in bulk, but Burchells in their letter gave the view that probably <sup>it</sup> would not be. This is ~~the~~ <sup>a</sup> question of fact.

A I think that on this point we can leave the matter alone between Kenya and the Solicitors on the one hand and the wharfage and lighterage companies on the other.

*(attached)*  
~~With regard~~ <sup>we must have been</sup> to the query raised in the last letter from Nairobi, where they say that they have been under the impression locally that the intention of exempting minerals in bulk from the general cargo which is handled by the port Contractors was to enable special arrangements to be made for the landing and shipment of bulk commodities of low value, which in the absence of such special arrangements probably would not pass through the port. I do not know quite what is meant since I have no special knowledge of the local arrangements. Could anything be landed in Kenya without passing through the port and could it get upcountry without going over railway? Perhaps the General Manager means that arrangements might be made to land minerals somewhere outside the theoretical limits of the Port of Kilindini, but I am not sure.

I have been through the correspondence including H. report of the Port Commission of Enquiry of 1925, but I can find nothing touching on the point raised by the General Manager. Prima facie the contention is reasonable but there

is

4  
is absolutely nothing in the papers to show what was the intention of the framers of the Agreement and the original draft was hatched locally and sent home for discussion. It was a provisional agreement made between the Port Administration and the Wharfage Companies and when agreed was then sent to us to be put into proper legal shape. I cannot see anything here to show what was at the back of the minds of the parties in specifically exempting minerals and other things, but I have little doubt that local impression of the intention is the correct one.

B. The reply to the Crown Agents can only be to that effect, i.e. that we have no information on the subject and that the Crown Agents should refer to Burchells and tell them so. We might also suggest to the Crown Agents that in any eventual reply they should point out that the agreement was originally framed locally and that there is nothing on record here to show what was the intention of the parties on the point raised.

J.E.W. Flood  
29.5.

Mr. Flood

? agree to both A & B above

T.O. Allen & Wray  
30.5.

Sh. C. Bottomley

you may be interested to see this queer question.

It may develop into trouble at Kilindini - or it may not.

? as proposed above at B.

J.E.W. Flood  
31.5. '25.



Yes. I am afraid I cannot help as to the litigation, and the U.S. word "(and over the Railway - etc)" are very difficult to understand.

Went 31.5.33 etc

To S.A. (1 and) min. 2/6/33

E.D. for use  
re letter

Crown Agents \_\_\_\_\_ 12<sup>th</sup> June 33

Trans. further cases with the General Manager S.H.R. & Messrs Burchells regarding the interpretation of Clause 2 (A) & 11 of the Agreement of 13<sup>th</sup> April 27.

Burchells adhere to their opinion that Cement Clinton is not to be regarded as a mineral.

The correspondence is sent to us for information only.

? Partly  
C.A. Fromm with  
13/6/33

C. Burchell  
15 etc

5. Crown Agents \_\_\_\_\_ 15<sup>th</sup> June 33  
Trans. a further letter from Burchells regarding the interpretation of Agreement of 13<sup>th</sup> April 27 & its rectification.

? Partly  
C.A. Fromm with  
7/6/33

Burchell  
17 etc

6. Crown Agents \_\_\_\_\_ 1<sup>st</sup> Aug 33

Trans. a copy of further cases respecting the Agreement of the 13<sup>th</sup> April 27 relating to the handling of cargo at Goualava.

There is neither a copy of the Case for Council's opinion nor of the opinion, but as the matter is one for the local authorities ? this may be partly.

C.A. Fromm with  
3/8/33

Council's opinion - from Government view

yes: but still but it hedges a bit.  
S.C.W. Flood  
4.8.33

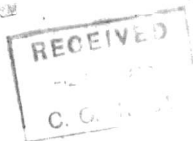
ALL COMMUNICATIONS  
TO BE ADDRESSED TO THE  
CROWN AGENTS FOR THE COLONIES,  
THE FOLLOWING REFERENCE AND THE  
DATE OF THIS LETTER BEING QUOTED.

0/Kenya 69.

TELEGRAMS: "CROWN LONDON"  
TELEPHONE: 7730 VICTORIA



61  
4, MILLBANK,  
WESTMINSTER,  
LONDON, S.W.1.



1st August 1933.

Sir,

With reference to our letter of the

NOS

15th June, I have the honour to transmit, for the  
information of the Secretary of State, a copy of

15.7.33.

further correspondence respecting the Agreement of the

1.8.33.

13th April, 1927, relating to the handling of Cargo  
at Mombasa.

I have the honour to be,

Sir,

Your obedient Servant,

*W. P. ...*  
FOR CROWN AGENTS.

The Under Secretary of State,

COLONIAL OFFICE.

FROM THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND  
HARBOURS TO THE CROWN AGENTS.

A.1/485.

Nairobi,  
Kenya.

15th July 1933.

Gentlemen,

With reference to your letters No. O/Kenya of the 2nd May and 13th June, 1933, forwarding copies of the opinion of Messrs. Burchells to the effect that Portland Cement Clinker is not a mineral within the meaning of the terms of the Cargo Handling Contract entered into between what is now the Kenya Landing and Shipping Co. Ltd., and the High Commissioner for Transport, I have been in communication with Messrs. The East African Portland Cement Co. Ltd., the Company which is importing the Clinker, and they are not entirely satisfied that Messrs. Burchells have come to a correct conclusion.

It is understood that Messrs. Burchells, in arriving at their decision, were without complete information on the subject.

As the matter is one of great importance to all parties concerned, I have prepared a case for the opinion of Counsel in England.

This case contains not only the contention of the Contractors but a statement from Mr. Kock-Petersen, the technical adviser to the East African Portland Cement Co. Ltd., and is based to a certain extent on information supplied by that Company.

/I

I shall be glad, therefore, if you will take steps to have this case put before Counsel, if possible:-

Mr. Harry Bevir Vaisey K.C.,  
3 New Square,  
Lincoln's Inn,  
London, E.C.

whom failing,

The Hon. S.O.Henn Collins, K.C.,  
4 Brick Court,  
Temple,  
London, E.C.

I have informed the East African Portland Cement Company Ltd., that if the opinion to be expressed by Counsel supports that of Messrs. Burchells, the whole question of the handling of Portland Cement Clinker at the Port and the charges thereon will have to be reconsidered.

I have the honour to be, etc.

(Sgd.) S.Thomas.

GENERAL MANAGER.



9  
O/Kenya 69.

1st August 1933.

**REGISTERED  
AIR MAIL**

Sir,

With reference to your letter No.A.1/465 of the 15th July, I have to inform you that, as requested, we arranged for Messrs. Burchells to obtain the Opinion of Mr. H.B.Vaisey, K.C., on the point which has arisen respecting the Agreement of the 13th April, 1927, relating to the handling of Cargo at Mombasa, and to confirm the following telegram sent to you on the 31st of July.

"With reference to your letter of 15th July Cargo Handling Contract Counsels opinion being sent by Air Mail favours Governments view and thinks arbitration would succeed if such clinker regarded as minerals in bulk by shippers shipowners and wharfingers generally."

The Opinion of Mr. Vaisey is forwarded herewith.

I am, Sir,

Your obedient Servant,

(S.D.) J. E. L. *unofficially*

FOR CROWN AGENTS.

The General Manager,  
Kenya and Uganda Railways and Harbours,  
Nairobi,  
KENYA.

5 10



ALL COMMUNICATIONS  
TO BE ADDRESSED TO THE  
CROWN AGENTS FOR THE COLONIES.  
THE FOLLOWING REFERENCE AND THE  
DATE OF THIS LETTER BEING QUOTED

O/Kenya 69.

TELEGRAMS: CROWN LONDON  
TELEPHONE: 7730 VICTORIA

4, MILLBANK,  
WESTMINSTER,  
LONDON. S.W.1.

RECEIVED  
16 JUN 1933  
C. O.

15th June 1933.

Sir,

NOH  
12.6.33.

In continuation of our letter of the  
12th June, I have the honour to transmit, for the  
information of the Secretary of State, a copy of a  
further letter from Messrs. Burchells respecting the  
interpretation of clauses 2(A) and 4 of the Agreement  
between the High Commissioner for Transport and the  
African Wharfage Co. Ltd., and Another, dated the  
13th April, 1927.

Our letter to the General Manager, Kenya  
and Uganda Railways and Harbours, was amended so as to  
include paragraphs 3 and 4 of Messrs. Burchells  
further letter.

I have the honour to be,

Sir,

Your obedient Servant,

J. S. Blomfield  
FOR CROWN AGENTS.

The Under Secretary of State,  
COLONIAL OFFICE.

CCPY

FROM MESSRS. BURCHELLS TO THE CROWN AGENTS.

12th June 1933.

5 The Sanctuary,  
Westminster,  
S.W.1.

Gentlemen,

African Wharfrage Company Limited.

Referring to your letter of the 6th instant and our reply of the 8th, we find that in such reply we did not specifically answer the question contained in paragraph 3 of the letter from the General Manager of the Kenya and Uganda Railways and Harbours to your goodselves of the 12th ultimo.

No 3

2. The point is dealt with in the letter addressed to you by the Colonial Office under No. 3166/33 in which it is stated that the Agreement was originally framed locally and that there are consequently no records in London of the intentions of the framers on the point raised.

3. Apart from the Agreement it is not permissible to refer to extraneous documents for the purpose of interpreting an executed document except in the case of a patent ambiguity, which, however, does not occur in the case of the Agreement under discussion.

4. If it can be definitely proved that the Agreement as executed did not represent the agreement actually come to between the parties at the time, an application in the case of an English Agreement could be made to the Court here for rectification, but we are not aware whether a similar application could be made to the Courts in Kenya.

We are, etc.,

(Sgd.) Burchells.

4<sup>12</sup>



ALL COMMUNICATIONS  
TO BE ADDRESSED TO THE  
CROWN AGENTS FOR THE COLONIES.  
THE FOLLOWING REFERENCE AND THE  
DATE OF THIS LETTER BEING QUOTED.

4, MILLBANK,  
WESTMINSTER,  
LONDON. S.W.1.

O/Kenya 69

TELEGRAMS: "CROWN LONDON"  
TELEPHONE: 7730 VICTORIA

12th June 1933

R  
13 JUN 1933  
C. O. REGD

Sir,

With reference to our letter of the 5th May,

I have the honour to transmit, for the information of  
the Secretary of State, a copy of further correspondence  
with the General Manager, Kenya and Uganda Railways and  
Harbours, and Messrs Burchells, respecting the  
interpretation of Clauses 2 (A) and 4 of the Agreement  
between the High Commissioner for Transport and the  
African Wharfrage Company Ltd. and Another, dated 13th  
April, 1927.

12.5.33. *Not*  
6.6.33.  
8.6.33.  
12.6.33.

I have the honour to be,

Sir,

Your obedient Servant,

for Crown Agents

The Under Secretary of State,  
COLONIAL OFFICE.



FROM THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS  
AND HARBOURS TO THE CROWN AGENTS

General Manager's Office,

Nairobi,

Kenya.

No. A.1/133/1.

12th May 1933.

Gentlemen,

I acknowledge receipt of your letter No.830/Kenya/69 of the 2nd instant, enclosing copy of Messrs Burchell's advice to the effect that cement clinker is not to be regarded as a mineral but would be comprised in the definition of "General Cargo" under the agreement between the High Commissioner and the African Wharfage Company Ltd. and another.

2. I should like to say that, here in the Colony, we have always been under the impression that the intention of exempting minerals in bulk from the General Cargo which our Port Contractors are entitled to handle, was to enable special arrangements to be made for the landing and shipment of bulk commodities of low value which, in the absence of such special arrangements, probably would not pass through the port (and over the Railway also).

3. It is, therefore, not without concern that I have read Messrs Burchell's letter. It may entail certain negotiations with our Contractors, and it would be helpful in the conduct of those negotiations if I could know whether there is on record any support for the impression referred to in the preceding paragraph.

4. I also would be glad to learn whether the advice given by Messrs Burchell's has been given on the strict wording of the Agreement alone without any reference whatever to what may have been intended by those who represented this Administration at the time.

I have the honour to be,  
Gentlemen,  
Your obedient Servant,

(Sgd) J.S. Coney

for General Manager.

FROM THE CROWN AGENTS TO MESSRS BURCHELLS

6th June 1933

Gentlemen,

With further reference to your letter marked "C" of the 28th April, regarding the question in connection with cement clinker which has arisen between the Administration of the Kenya and Uganda Railways and Harbours and the African Wharfage Company Ltd. I transmit a copy of a further letter received from the General Manager on the subject, and have to request your observations thereon.

As regards the third paragraph of the letter, we have referred to the Colonial Office, and a copy of the reply received is enclosed.

I am, Gentlemen,

Your obedient Servant,

(Signed)

for Crown Agents

5, The Sanctuary,  
Westminster, S.W.1.

FROM MESSRS BURNHILLS TO THE CROWN AGENTS

5, The Sanctuary,

Westminster, S.W.1.

6th June 1935

Gentlemen,

African Wharfrage Company Limited

We beg to acknowledge receipt of your letter of the 6th instant with the enclosures therein mentioned.

2. With regard to paragraphs 2 and 4 of the letter from the General Manager of the Kenya and Uganda Railways and Harbours of the 12th May 1935, our letter of the 26th April was based on the legal interpretation of the Agreement of the 13th April 1927 and the pamphlet on the manufacture of Portland cement clinker forwarded in your letter of the 25th April last.

3. Dealing with the exceptions in Clause 2 (a) of the Agreement, this Clause is not so drawn as to exclude all cargoes in bulk from the term "cargo", but only such bulk cargoes as are specified therein, of which minerals is one.

4. Referring to the pamphlet, page 16, it is quite clear that Portland cement clinker is manufactured by subjecting chalk and clay to an extremely high temperature whereby they are formed into a double silicate of lime and alumina known as Portland cement clinker, the effect of which in our opinion is to destroy the original characteristics of both the chalk and the clay and turn them into a manufactured article; it is indeed Portland cement in the raw as it only requires grinding down to the required fineness before it can be used in the ordinary way.

5. For these reasons we regret that we must adhere to the opinion expressed in our former letter.

We are,

Gentlemen,

Your obedient Servants,

(Sgd) Burchells.

CROWN  
STANDARD  
AGENTS

CROWN  
STANDARD  
AGENTS

1901



17  
12th June 1955

110. AIR MAIL

Sir,

With reference to your letter No.A.1/155/1 of the 12th May, I have to inform you that, as requested, we communicated again with Messrs Burchells respecting the interpretation of Clauses 2 (A) and 4 of the Agreement between the High Commissioner for Transport and the African Wharfage Company Ltd. and Another, dated 13th April 1927.

8.6.55.

2. I enclose a copy of the reply received from Messrs Burchells, from which it will be seen that they adhere to their original opinion, which they say was based on the legal interpretation of the Agreement.

3. It appears that the Agreement in question was originally framed locally, and there are consequently no records in London of the intentions of the framers on the points raised.

I am, Sir,

Your obedient servant,

(Sd) J. C. Leonard.

for Crown Agents

The General Manager,  
Kenya & Uganda Railways & Harbours,  
Nairobi,  
Kenya.

u.c.u.

G. O.

Mr. Davies

Mr. ~~Fresh~~

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

3166/33 Kenya.



DRAFT. MINUTE

IMPORTANT.

"O" Department.

Crown Agents.

With reference to your minute, No. O Kenya 69 of the 25th of May, it is agreed that it would be well to ~~refer to~~ <sup>Admin. the advice of</sup> Messrs. Burchells, ~~on the basis raised in~~ <sup>for their advice,</sup> the letter from the General Manager of the Kenya-Uganda Railways respecting the interpretation of the agreement between the High Commissioner for Transport and the African Wharfrage Company Limited and Another. ~~In regarding the letter to Messrs. Burchells,~~ <sup>they</sup> might be informed that ~~no~~ <sup>no</sup> information is available in this Office as to whether ~~it was~~ the intention of the framers of the agreement <sup>in exempting</sup> to ~~exempt~~ minerals in bulk

bulk

bulk from the general cargo which  
the Kenya port contractors are entitled  
to handle ~~in order~~ <sup>was</sup> to enable special  
arrangements to be made for the landing  
and shipment of bulk commodities of  
low value, and it is suggested that

Mr. Dunhill be so informed.

It is also suggested that ~~when in any~~

~~should~~

you reply to the General Manager's

letter you might point out that the  
agreement was originally framed locally,  
and that there are consequently no  
records in London of the intentions  
of the framers on the points raised.

(Signed) L. B. FREESTON

C.O.

2 June, 1933.





COPY OF LETTER FROM THE GENERAL MANAGER. K.U.R.LYS AND HARBOURS TO  
CROWN AGENTS.

BY AIR MAIL.

General Manager's Office,  
Nairobi.

12th May 1933.

A/1/133/1.

Gentlemen,

I acknowledge receipt of your letter No.830/Kenya/69 of the 2nd instant, enclosing copy of Messrs.Burchell's advice to the effect that cement clinker is not to be regarded as a mineral but would be comprised in the definition of "General Cargo" under the agreement between the High Commissioner and the African Wharfage Company Limited, and another.

2. I should like to say that, here in the Colony, we have always been under the impression that the intention of exempting minerals in bulk from the General Cargo which our Port Contractors are entitled to handle, was to enable special arrangements to be made for the landing and shipment of bulk commodities of low value which, in the absence of such special arrangements, probably would not pass through the Port ( and over the Railway also.)

3. It is, therefore, not without concern that I have read Messrs.Burchell's letter. It may entail certain negotiations with our Contractors and it would be helpful in the conduct of those negotiations if I could know whether there is on record any support for the impression referred to in the preceding paragraph.

4. I also would be glad to learn whether the advice given by Messrs.Burchell's has been given on the strict wording of the Agreement alone without any reference whatever to what may have been intended by those who represented this Administration at the time,

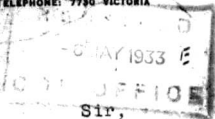
I have the honour to be,  
Gentlemen,  
Your obedient servant,  
(Sgd). J.S.CONEY.  
for GENERAL MANAGER.



ALL COMMUNICATIONS  
TO BE ADDRESSED TO THE  
CROWN AGENTS FOR THE COLONIES,  
THE FOLLOWING REFERENCE AND THE  
DATE OF THIS LETTER BEING QUOTED.

O/Kenya 69

TELEGRAMS: "CROWN LONDON"  
TELEPHONE: 7750 VICTORIA



4, MILLBANK,  
WESTMINSTER,  
LONDON. S.W.1.

5th May, 1933.

No 47. (7)  
10107/27  
Answer

With reference to your letter No. 10107/27 of the

24th June 1927, I have the honour to transmit, for

12.4.33.

the information of the Secretary of State, a copy of

25.4.33.

correspondence with the General Manager, Kenya and

28.4.33

Uganda Railways and Harbours, and Messrs. Burchells

2.5.33.

respecting the interpretation of Clause 4 of the

Agreement between the High Commissioner for Transport

and the African Wharfage Co. Ltd., and Another, dated

No 34.

13th April 1927.

10107/27.

I have the honour to be,

Sir,

Your obedient servant,

*J. Lawrence*  
for Crown Agents.

The Under Secretary of State,  
COLONIAL OFFICE.

COPY OF LETTER FROM THE GENERAL MANAGER, KENYA AND UGANDA  
RAILWAYS AND HARBOURS TO CROWN AGENTS.

General Manager's Office,  
Nairobi,  
Kenya.

No.A.1/133/1

12th/13th April, 1933.

Gentlemen,

A difference of opinion has arisen between this Administration and its Cargo-handling Contractors at the Port of Mombasa as to whether Cement Clinker in bulk, (which the Administration is advised will shortly be imported into the Colony) comes within the provisions of Clause 2 of the Agreement between the High Commissioner for Transport and the African Wharfrage Co., Ltd., and Another, dated 13th April 1927, which agreement was prepared by Messrs. Burchells, 5, The Sanctuary, Westminster, S.W.

2. The contention of the Company is that they are entitled to perform the usual handling work of Cement Clinker in bulk imported at Mombasa, and this contention is set out in the following letter.-

"We beg to refer you to the addition to Section 24, page 18, of the Harbour Tariff, appearing in the Official Gazette of the 11th October, and having reference to the Landing Charges on Cement Clinker.

We cannot look upon the Clause therein, "the handling of this commodity to be carried out by the importer", otherwise than as an infringement of the terms of our Cargo Handling Agreement and therefore would record our protest.

We understand in framing this addition to the Harbour Tariff, that Cement Clinker has been looked upon as a "mineral in bulk", whereas we are of the opinion that it is a manufactured article, although possibly all its component parts may be minerals in the strict naming of the word.

We shall much appreciate your views at your convenience."

and again in the subjoined.-

"The question which we wish settled at the moment is purely a question of principle and the crux of the situation would appear to be the correct interpretation of the term "minerals in bulk" as figuring in Clause 2 Section A of our Cargo handling Agreement.

*Agreement*  
We maintain that Cement Clinker is, in a commercial sense, a semi-manufactured article and therefore does not come under the heading of a mineral in bulk."

3. The contention of this Administration is that Cement Clinker is a mineral, and that when it is imported in bulk

COPY OF LETTER FROM THE GENERAL MANAGER, KENYA AND UGANDA  
RAILWAYS AND HARBOURS TO CROWN AGENTS.

General Manager's Office,  
Nairobi,  
Kenya.

No.A.1/133/1

12th / 13: April, 1933.

Gentlemen,

A difference of opinion has arisen between this Administration and its Cargo-handling Contractors at the Port of Mombasa as to whether Cement Clinker in bulk, (which the Administration is advised will shortly be imported into the Colony) comes within the provisions of Clause 4 of the Agreement between the High Commissioner for Transport and the African Wharfage Co., Ltd., and Another, dated 14th April 1927, which agreement was prepared by Messrs. Burdett, 5, The Sanctuary, Westminster, S.W.

2. The contention of the Company is that they are entitled to perform the usual handling work of Cement Clinker in bulk imported at Mombasa, and this contention is set out in the following letter.-

"We beg to refer you to the addition to Section 24, page 16, of the Harbour Tariff, appearing in the Official Gazette of the 11th October, and having reference to the Landing Charges on Cement Clinker.

We cannot look upon the Clause therein, "the handling of this commodity to be carried out by the importer", otherwise than as an infringement of the terms of our Cargo Handling Agreement and therefore would record our protest.

We understand, in framing this addition to the Harbour Tariff, that Cement Clinker has been looked upon as a "mineral in bulk", whereas we are of the opinion that it is a manufactured article, although possibly all its component parts may be minerals in the strict naming of the word.

We shall much appreciate your views at your convenience."

and again in the subjoined.-

"The question which we wish settled at the moment is purely a question of principle and the crux of the situation would appear to be the correct interpretation of the term "minerals in bulk" as figuring in Clause 2 Section A of our Cargo handling Agreement.

We maintain that Cement Clinker is, in a commercial sense, a semi-manufactured article and therefore does not come under the heading of a mineral in bulk."

3. The contention of this Administration is that Cement Clinker is a mineral, and that when it is imported in bulk

/it.

it is not included in the term "cargo" used in Clause 4 of the Agreement, being expressly excluded therefrom by the definition of the word "cargo" contained in Clause 2(a).

4. For convenience of reference, the wording of Clauses 2(a) and 4 of the Agreement in question are given below.-

"2(a) Cargo shall mean and include all general cargo goods mails and ivory passengers' movable property of every description and baggage animal and birds whgether alive or dead. It shall not include coal coke patent fuel minerals or oils in bulk or soda shipped at the Magadi Soda Company's jetty."

"4. The Contractor shall perform the shore handling work (as hereinafter defined) of all cargo at theport of Mombasa as Contractors for and in the name of the Administration....."

5. I shall be glad if I may be furnished by Air Mail, with your opinion as to whether the contention of (a)the Contractors, or (b) this Administration, is correct.

I have the honour to be,

Gentlemen,

Your obedient servant,

(Ssd) ?

General Manager.

COPY OF LETTER FROM THE CROWN AGENTS FOR THE COLONIES  
TO MESSRS. BURCHELLS.

25th April, 1927.

Gentlemen,

With reference to your letter of the 20th April, 1927, marked C, transmitting copies of an Agreement between the High Commissioner for Transport, Kenya, and The African Wharfrage Co. Ltd., and another, for handling cargo at Mombasa, I transmit herewith a copy of a letter from the General Manager, Kenya and Uganda Railways and Harbours, and have to request you to furnish us at an early date with your observations on the point raised.

The enclosed pamphlet on the manufacture of cement shows the nature of cement clinker. We shall be obliged if you will return it in due course.

I am, etc.

(S3d)

for Crown Agents.

COPY OF LETTER FROM MESSRS. BURCHELLS TO CROWN AGENTS.

5, The Sanctuary,  
Westminster,  
S.W.1.

26th April, 1933

Gentlemen,

African Wharfrage Company Limited.

We have now carefully considered the point referred to us in your letter of the 25th instant, which put shortly is the question whether two mineral substances treated by a prolonged, scientific, and varied treatment and thereby converted into a product of a totally different character, remain a mineral substance or are converted into a manufactured product.

2. For the purpose of this opinion we may assume that both clay and chalk are minerals, as in the Court of Appeal in the case of the Earl of Jersey v. The Guardians of the Poor of the Neath Poor Law Union, 58 Law Journal Reports 1885 Q.B.D. page 573, Lord Esher in giving judgment referred to the case of Hext v. Gill 41 Law Journal Reports, Chancery 791, and Law Journal Reports 7 Chancery 699, page 712, and stated as follows:-

"but I go further and I say that Hext v. Gill and the rule there laid down is absolutely right, and if the question came before us now for the first time I for my part should decide it in the same way. The definition in Hext v. Gill is not a new one then for the first time laid down, but is the result of a long series of previous cases. Mellish L.J. there says "The result of the authorities, without going through them appears to be this; that a reservation of minerals includes every substance which can be got from underneath the surface of the earth for the purpose of profit."

3. Substances of clay and chalk come undoubtedly within the definition laid down by Mellish L.J. and the Associated Portland Cement Manufacturers Limited would be the last to contend that they obtained these two substances from underneath the surface of the earth for any other purpose than making a profit.

4. It appears from the pamphlet of the Company which accompanied your letter that when these two substances are obtained they go through a long complicated and scientific treatment, with a result that they become entirely different, cease to be either clay or chalk, and become a double silicate of lime and alumina, which is stated to be the main constituent of Portland Cement clinker. We gather that it is contended on behalf of the Government of Kenya that this clinker is still a mineral and therefore falls within the exception to Clause 2 (a) of the Agreement of the 13th April 1927 and made between the High Commissioner for Kenya and the African Wharfrage Company Limited and Another. Clause 2(a) defines the word "cargo" as used in the Agreement to mean and include all general cargo etc., but does not include coal, coke, patent fuel, minerals or oils in bulk etc.

5. We have carefully considered the whole matter and have come to the definite opinion that Portland Cement clinker is a manufactured product and cannot be defined as a mineral. There

are many products manufactured from minerals but which have ceased to be minerals in the course of their manufacture; iron for instance is a mineral but when treated with carbon it becomes steel which is not a mineral; brass again is not a mineral, although it is composed of copper and zinc, both of which are minerals; numerous similar cases can be cited in support of our view.

6. We are not clear from the correspondence whether the Portland Cement clinker is shipped in bulk or in sacks, barrels, or steel drums, but we should imagine that as, having regard to the nature of the product, it must at all costs be protected from damp it would if shipped to Mombasa be in steel drums and not in bulk. Whether it is shipped in bulk or in containers of any description we are definitely of opinion that Portland Cement clinker is not a mineral, and would be comprised in the definition of "General Cargo".

We are, Gentlemen,

Your obedient servants,

(Sgd) Burchells.

*Handwritten initials*



COPY OF LETTER FROM THE CROWN AGENTS TO THE GENERAL  
MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS.

2nd May, 1933.

Sir,

I have to refer to your letter No.A.1/133/1 of the 12th April, respecting the question which has arisen between the Administration of the Kenya and Uganda Railways and Harbours and its cargo-handling contractors at Mombasa as to whether cement clinker in bulk comes within the provisions of Clause 4 of the Agreement between the High Commissioner for Transport and the African Wharfrage Co.Ltd., and Another, dated 13th April, 1927.

2. In reply I enclose a copy of a letter received from Messrs.Burchells, to whom we referred on the subject, in which they express the definite opinion that (Portland) cement clinker is not to be regarded as a mineral, but would be comprised in the definition of "General cargo".

3. We may add that in referring specifically to Portland Cement clinker, Messrs.Burchells follow a pamphlet on the subject of the manufacture of Portland cement issued by the Associated Portland Cement Manufacturers Ltd., with which we furnished them for their information in this connection. We conclude that this is the type of clinker which is under discussion.

4. Since the agreement under reference was originally drawn up by Messrs.Burchells on direct instructions from the Colonial Office and the final-draft was submitted by them to that Department, we are sending to the Colonial Office a copy of the present correspondence.

I am, etc.

(Sgd)

for Crown Agents.