

1935.

Kenya.

No. 38060/1.

SUBJECT CO 533/456

Magadi Soda Company Ltd.

Business depot at Shimanyi Pier

Previous

Main file

Subsequent

1936.

C.4

Magadi Soda Co Ltd

Transit

1. H. Cms Transport Corp (Am Mail) _____ 21st May '35

Submits proposals for the purchase of the Magadi Soda Company depot works at Shemawa pier including the branch line to the works, in order to prevent congestion at the port of Mombasa. Agents to be asked to initiate discussions with the Company.

2. Crown Agents _____ 14th June '35

Re: copy of memo. with the General Manager regarding demarcation to be placed upon clause 12 of the lease of the port, branch railway, works & pier at Mombasa & seek assistance in the matter.

There are two quite different matters in this correspondence. The first is the legal interpretation of the price to be paid to the Magadi Company for their pier and other works at Kilindini. The second question is whether general negotiations should be entered into with the Company with a view to bludgeoning them out of their present somewhat favoured position.

On the first point it is obvious that legal interpretation is desirable. The Agreements in question will be found in LS88/29, Part I. The Agreement covering the port, branch railway line, works and pier is separate from the Agreement for the rest of the Mombasa Railway and is flagged. The only difficulty about it is Clause 12 dealing with the price to be paid by Government. Under Clause 12 Government has the right at any time during the continuance of the lease to purchase the demised property or any part thereof and all the interests of the Lessees "at the price hereinafter mentioned or a proportionate part thereof" on giving a year's

blue flag

notice

C.S.

Magadi Soda Co. Ltd

Transport

1. H. G. Transport Corp (Am Mail) _____ 21 May 35

Submits proposals for the purchase of the Magadi Soda Company depot works at Shimanore Pier including the branch line to the works, in order to prevent congestion at the port of Mombasa. Agents to it may be asked to initiate discussions with the Company.

2. Brown Agents _____ 14th June '36.

Re: entry of cases with the General Manager regarding demarcation to be placed upon clause 12 of the lease of the Port Branch Railway. Workers Pier at Shimanore & such connections in the matter.

There are two quite different matters in this correspondence. The first is the legal interpretation of the price to be paid to the Magadi Company for their pier and other works at Kilindini. The second question is whether general negotiations should be entered into with the Company with a view to bludgeoning them out of their present somewhat favoured position.

On the first point it is obvious that legal interpretation is desirable. The Agreements in question will be found in LS 685/29, Part I. The Agreement covering the port, branch railway line, works and pier is separate from the Agreement for the rest of the Magadi Railway and is flagged. The only difficulty about it is Clause 12 dealing with the price to be paid by Government. Under Clause 11 Government has the right at any time during the continuance of the Lease to purchase the demised property or any part thereof and all the interests of the Lessees "at the price hereinafter mentioned or a proportionate part thereof" on giving a year's

notice

Blue flag

notice. Under Clause 12 the price payable is the agreed amount of the capital prior to the date of the Lease (20th March, 1928) plus all sums expended after 20th March, 1928, and before notice was given, and the trouble turns on the proviso which reads that

"...in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year".

Now, the Lease was for 99 years and it seems painfully obvious to me that the intention, and indeed the legal effect, of this Clause is that the valuation of the property shall come down by 1% for each year - thus, in March, 1929, the value would have been £714,477 less £714 and so forth, and the letter from the Crown Agents to the General Manager apparently took this view. The people in Kenya, however, argue that until notice is given and a year allowed to elapse after it, no price is "payable". It follows then that on Kenya's interpretation Government could never get the things at a lower price than 1% ^{over the} of the total cost, unless they adopted the extraordinary procedure of giving notice year after year in order to fix a price which might be "payable" even though they had no intention of paying. The Crown Agents' law as set out in paragraph 3 of their letter of the 4th June is, I think, unimpeachable, being to the effect that if a document is capable of

interpretation

interpretation as it stands it is not right to refer to anything else for the purpose of constraining it. If, however, there is any ambiguity then it is permissible and the Court must examine so far as it can what were the intentions of the parties.

In this case, however, I don't think there can be any ambiguity - the words must mean something and the plain straightforward interpretation is that the valuation shall be reduced by 1% each year, the new capital being included in ^{full} cost for the first year and then becoming subject to the reduction of 1% for subsequent years. In any case, if I came to negotiating with the Company I think that the obvious thing to do would be to offer payment on that basis and see whether they departed. I don't think they would, but I should like legal opinion as to whether the Kenya interpretation of Clause 12 can possibly be regarded as holding water.

But a much more important problem than the acquisition of the pier, branch line, etc. by Government is the proposal put forward in paragraphs 4, 7 and 8 of the High Commissioner's despatch - 13.1 on this file. The original Agreement with the Company provided that they should send not less than 100,000 tons of goods each year, but since 1932 they have had a moratorium on the subject and need only ship 25,000 tons. It is now suggested that the Company should be informed that the moratorium will not be further extended unless they are prepared to revise the

provisions of the Lease governing the port, wharf, etc., and further that the Company should agree that if Government takes over the pier and so on, the whole of the Company's imports and exports should be handled by the Port authorities, subject to the normal charges for such service. This will, of course, bring a very heavy liability on the Company.

I think myself that the only result of such action by the Railway would be to drive the Company into liquidation forthwith, and then Kenya would be faced with a derelict line from Lake Magadi to the main line and a complete loss of the small amount of traffic which they get at present. As things are, we know quite well that the unfortunate Company is operating on a very hand-to-mouth basis and may have to shut down at any time.

Before we start making any overtures to the Company, I think it is just as well to get the legal point settled. If my view is right the Railway will get the pier, etc., cheaper than they think and in that case will probably not be so anxious to drive a hard bargain. Under the Lease as it stands at present, if Government does take over the Leases will still be entitled to the same facilities over the branch railway as if they still owned it, and the right to use the premises for conveying, storing, loading and unloading soda goods as though they still

4
owned it, and it would seem a bit hard to make them abandon that simply because they had found themselves totally unable to fulfil their expectation of railings 100,000 tons a year.

~~J. I. G. S.~~

12.6.35.

182 655
Mr. Marriott, the Government Director of the Magadi Company, called and saw Sir Cecil Bottonley on the evening of the 13th. He had heard from their local Manager in Kenya that the Railway was toying with the idea of taking over the wharf, etc. and he said that from the Company's point of view they would welcome it, since under the Lease they will still be able to go on using the premises just as if they still owned them, and will get the cash into the bargain.

On the subject of the cash he had no doubt whatever that Government should calculate depreciation at 1% per annum, and the fantastic interpretation put forward in Kenya had obviously not occurred to him or to any of the Company's people. He told us that the Company had spent about £16,000 since 1928. This corresponds with the figure given in the General Manager's letter of the 8th April, with the addition of £10,000 expended in 1934. This £10,000 was for new roofs and it is arguable how much of it can be described as betterment and how

much as renewals.

His Accountants work out the total liability of Government at £82,635. The figure given by the Crown Agents in their letter of the 3rd May was £75,088, but that, of course, does not take into account the latest large payment. In trying to work it out I arrive at a figure of £74,240, so probably it will not be hard to reach an agreed figure. Mr. Marriott is not aware of the Kenya interpretation of the Agreement but thinks Kenya is contending that 1% per annum is too little and I fancy he is disposed to agree. The upset of that is that his figure of £82,635 can probably be reduced by negotiation. He said that the wharf, etc., stood in the Company's books at somewhere about £102,000.

If, then, we can get the legal interpretation out of the way, I think the thing to do is to inform the K.U.R. that their local interpretation is all moonshine, and that 1% per annum depreciation is properly allowable. Say that it is understood that the Company will be quite prepared to negotiate, and that the Crown Agents will accordingly be instructed to approach them. And instruct the Crown Agents accordingly, sending them a copy of No. 1 on the file and of our despatch to Kenya, and tell Mr. Marriott that the Crown Agents will be approaching him.

14.6.35.

5
In view of the provisions of Clause 20 of the lease in question, the Secretary of State cannot give a ruling as to the interpretation to be placed upon Clause 12.

So far as I understand it, however, the intention appears to have been to provide for the purchase price, viz. £71,477. 13. 6. + 1% (i.e. the sums mentioned in (A) and (B) of Clause 12) being reduced by 1 per cent each year. The proviso in question states that "in determining the price payable by the Government at the beginning of any year, there shall be deducted in respect of depreciation a sum equal to 1 per centum of the price payable by the Government at the beginning of the previous year" - that is to say, presumably, the price that would have been payable if the Government had exercised the option to purchase under Clause 10 or 11. If this is correct, it would mean that in 1935 the purchase price would be 1 per cent less than in 1934, and in 1934 1 per cent less than in 1933, and so on.

This would appear to be the view taken by the Crown Agents and by Mr. Flood; and, although the position does not seem to be quite clear, I am ~~able~~ ^{disposed} to agree with it.

16/6/35.

H. Duncan.

If "the price payable" in the first line of the proviso means the price payable as a result of a valid notice to purchase, what do the words mean in the third line? Further, upon the same basis, what is the relevance of the words "at the beginning of any year"? since notice to purchase has not got to be given at any particular time of the year. I regard

the price payable as being a notional price fixed year by year by a deduction each year of 1 per cent for depreciation. It is a most oddly drafted clause, but I agree with Mr. Flood and Mr. Duncan that that is the only sensible construction of it.

JFB 19.6.35.

Sir C. Bottomley

You will remember that Mr. Marshall took the same view. He thinks Kenya is out to beat the price down below the 1% per annum & that that is what is behind the reluctance to approve the Co. and we carefully did not tell him the real trouble.

The whole of the price etc. ought I think to be kept separate from the other question of the amount of soda to be raised at any rate till a price is settled. But though the K.U.R. want to raise the allied question of what is to be paid for the use of the pier by the Co. Under the agreement, the Co. has the right to go on using as if it still owned the thing. The K.U.R. wants to make them agree to the same basis as other camps. Besides the reason to make the Co. agree is to remove evidence of the moratorium. But then the Co. will just go out of business. It can't sell any more soda & if even if the K.U.R. agree to a reduced quantity I imagine that the extra cost proposed would just kill the concern.

So:

- A. Tell the C.O. they can tell it that one percent per annum was meant and insist that to approve the Co. with a view to ascertaining what terms they would accept, on the basis of the agreement, as the true price, & whether they would in fact, accept less in view of the

very low depreciation envisaged in the agreement. We should tell the C.O. that there may be some difficulty in ascertaining the exact 'agreement price'.

B. Tell Mr. Marshall ^{lay down} ~~discuss~~ other terms as conditions of removing the moratorium.

C. Tell the 'High Comm' what we think of the interpolation of the clause & send a copy of A. And as to B. remark that the Co. can't possibly sell 100,000 tons and that to impose onerous terms might well drive them out of business, and say we understand the Co. will be quite ready to negotiate as to price and no doubt on the other matters when a price is agreed.

[As it stands the Co. is in a strong position as if they sell the pier etc. they can go on using it just as if they had not sold. So they have a good bargaining counter if Govt. wants to use the pier and make them pay something.]

J.C. Flood
21.6.

So proposed. I think that more B. is what has to be told Mr. Marshall, for he can't say, that the K.U.R. have in mind the business required for the piers mentioned in para. 4 of the agreement. There's very little, & he's satisfied with friendly arrangements as to working but not, I think, that the Co. should pay full basket toll.

JFB
21.6.35.

Mr. Flood.

The attached drafts appear to be satisfactory except that ^{the} second paragraph of paragraph 4 of the letter to Mr. Marriott requires some qualification. If the Company's assets at the port (i.e. those enumerated at the end of paragraph 2 of the draft letter to the Crown Agents) are purchased now by the Government under Clauses 11 and 12 of the port lease, there could be no question of imposing any conditions as to the use by the Company of the branch railway, because under Clause 11(11)(B) of the port lease they are entitled to "the right to have the same facilities over the branch railway as if the same were still in their possession." We could ask them, however, to agree to the conditions proposed.

I have accordingly made the necessary addition to the draft in question.

29/6/35.

A. Duncan.

Thank you, but it would be quite desirable to amend ~~the~~ ~~provision~~ ~~in~~ ~~clause~~ ~~4~~ ~~of~~ ~~the~~ ~~letter~~ ~~to~~ ~~Mr.~~ ~~Marriott~~ ~~in~~ ~~order~~ ~~to~~ ~~enable~~ ~~the~~ ~~Company~~ ~~to~~ ~~agree~~ ~~to~~ ~~these~~ ~~conditions~~ ~~as~~ ~~part~~ ~~of~~ ~~the~~ ~~terms~~ ~~of~~ ~~purchase~~ ~~under~~ ~~the~~ ~~Port~~ ~~Agreement~~ ~~but~~ ~~they~~ ~~may~~ ~~not~~ ~~agree~~ ~~to~~ ~~it~~ ~~and~~ ~~what~~ ~~can~~ ~~be~~ ~~done~~ ~~to~~ ~~what~~ ~~the~~ ~~K.M.R.~~ ~~proposes~~ ~~to~~ ~~make~~ ~~a~~ ~~revision~~ ~~of~~ ~~Clause~~ ~~11~~ ~~of~~ ~~the~~ ~~Port~~ ~~Agreement~~ ~~one~~ ~~of~~ ~~the~~ ~~considerations~~ ~~is~~ ~~the~~ ~~main~~ ~~consideration~~ ~~for~~ ~~an~~ ~~extension~~ ~~of~~ ~~the~~ ~~arrangement~~ ~~under~~ ~~the~~ ~~other~~ ~~the~~ ~~Railway~~ ~~agreement~~.

So I have made a further alteration which I should like you to have a look at.

The position is this:

- (i) Under the Port Lease ^{The K.M.R.} ~~we~~ can purchase the works of the port branch line at a price - cost less 1% per annum. If so, the Company, under § 11, may be using the things just the same. We might ask them to agree to pay up their rights but there would be no consideration to offer beyond the K.M.R. agreeing to purchase the premises & to pay the agreed price.

This is your point and it is obviously correct.

But -

- (ii) Under the Railway Lease, the Co. is bound to ~~maintain~~ 100,000 tons of steepl. They have never done it and by supplemental agreements the amount has been reduced to 20,000 tons a year for various periods, the latest extension being up to 31.12.1936. When it comes to considering further extensions of this supplemental agreement (which simply must be done so the Co. can run ^{out} 100,000 tons - they can't call it) then the K.M.R. can and for any time it likes as a condition of extension. The condition they propose to add is that the Co. shall drop the right to give use of the Port facilities under § 11(11)(B) of the Port Lease, and shall be treated like anyone else

- to give up from the purchase by ~~the~~ ^{K.M.R.} of the Port branch line etc. under 11). The purchase can be done anytime, but the revision of Clause 11 can only be done when an extension of the arrangement as to tonnage is to be made (some time next year, or earlier if the Co. is prepared to do it).

[I expect the Co. to get it. It will put some other proposal on them & they can't afford it, and I can't see why the K.M.R. to mind, because if they do, the Co. will probably close down & that would be a disaster to the K.M.R.]

J.L.D.

1935

I had fully appreciated the position as set out in (1) and (11) ^{of your} minute of 29/6/35.

The High Commissioner in paragraph 6 of No.1 makes it clear that when any further extension of the moratorium (which expires on 31/10/36) relating to the despatch by rail of so many tons of soda per annum under the Railway Lease is being considered, such extension should be made subject to a revision of Clause 11(ii)(B) of the Port Lease; but he then goes on, in the same paragraph, to say that in the event of the Company's assets being acquired by the Government, the conditions under which the Company should be allowed to use the branch railway at the port and the premises in question should be etc., etc., etc. (i.e. as set out in the second paragraph of paragraph 4 of the draft letter to Mr. Marriott).

It seemed to me clear, therefore, that the High Commissioner contemplated the revision of Clause 11(ii)(B) of the Port Lease as one of the conditions, if the ^{Company} ~~Government~~ would agree, of the proposed purchase under Clauses 11 and 12 of that Lease - and this view is supported by what the High Commissioner says in paragraph 8 of No.1. That is why I did not include any reference to the extension of the moratorium when altering the draft.

Your marginal addition, however, on this point seems to make the position quite clear if ~~the High Commissioner~~ the High Commissioner wants the extension of the moratorium in respect of the Railway Lease discussed at the same time as the proposed purchase under the Port Lease.

2/7/35.

H. Duncan.

It doesn't matter much but I think the point at X is really this:

The H. Comm. wants to do two things

A. Buy out the pier etc. under the Port lease

B. Put on new terms for an extension of the moratorium

He isn't sure about A because there may be a squabble over the price.

If he does B ~~without~~ ^{without} A he can't put conditions on the Company's use of the pier etc. because the Port lease will still be of full force - hence the insertion of the words "in the event..." etc.

? The drafts may seem

J.L.G.

Yes. I do not think the H.C. ~~wants~~ means to make a condition of purchase the operation of a condition of purchase ~~there is~~

W.L.D.
37 since

3 To Hugh F. Marriott

4 G.A. (Lamb.) ^{Box 11}

To H. G. Innesport ^(art. 1, 2, 3, 4) ^{Box 11}

To H. G. Innesport ^(art. 1, 2, 3, 4)

AIR MAIL 6/7

H. G. Innesport

GM

5/7/35

7 30

4 0 30 1935

I had fully appreciated the position as set out in (1) and (11) ^{of 2/29/35} of your minute of 29/6/35. ~~etc.~~

The High Commissioner in paragraph 8 of No.1 makes it clear that when any further extension of the moratorium (which expires on 31/10/36) relating to the despatch by rail of so many tons of soda per annum under the Railway Lease is being considered, such extension should be made subject to a revision of Clause 11(11)(B) of the Port Lease; but then goes on, in the same paragraph, to say that in the event of the Company's assets being acquired by the Government, the conditions under which the Company should be allowed to use the branch railway at the port and the premises in question should be etc., etc., etc., (i.e. as set out in the second paragraph of paragraph 4 of the draft letter to Mr. Marriott).

It seemed to me clear, therefore, that the High Commissioner contemplated the revision of Clause 11(11)(B) of the Port Lease as one of the conditions, if the ~~Company~~ ^{Company} would agree, of the proposed purchase under Clauses 11 and 12 of that Lease - and this view is supported by what the High Commissioner says in paragraph 8 of No.1. That is why I did not include any reference to the extension of the moratorium when altering the draft.

Your marginal addition, however, on ~~the draft~~ seems to make the position quite clear if ~~the High Commissioner~~ the High Commissioner wants the extension of the moratorium in respect of the Railway Lease discussed at the same time as the proposed purchase under the Port Lease.

2/7/35.

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really this:

The H. Comm. wants to do two things

A. Buy out the price of the under the Port Lease

B. Put on new terms for an extension of the moratorium

He can't agree about A because there may be a squabble over the price.

If he does B ~~without~~ without A, he can't put conditions on the Company's use of the price etc. because the Port Lease will still be of full force - hence the insertion of the words "in the event" etc.

The drafts may read

S. 10.1

Yes, I do not think the H.C. means to make a condition of purchase the operation of a condition of purchase. Hence B.

W.C.D.

3/7 since

3 To Hugh F. Marriott

4 G.A. (2nd ed.) ^{5/11} ~~5/11~~ ^{5/11} ~~5/11~~

To H. G. S. (2nd ed.) ^{5/11} ~~5/11~~ ^{5/11} ~~5/11~~

To H. G. S. (2nd ed.) ^{5/11} ~~5/11~~ ^{5/11} ~~5/11~~

AIR MAIL 5/7/35

H. F. Marriott

SM

5/7/35

20 JUL 1935

7. H. F. Mansell (s.o) _____ 29th July 35

States that he has obtained the agreement of the Board for sale of the Shimanaei Port Works for the sum of £70,217.19.8. & gives details of conditions for the transaction.

Now that you have discussed this with Sir Joseph Dymally, we can write as in draft hereunder

J. Mansell
D/S

to C.B.

6/8/35

By air mail

8 To G. H. V. Wall (s.o) etc

9 H. F. Mansell (s.o) etc

9/8/35

10 H. F. Mansell (s.o) _____ 13th Aug 35

DESTROYED UNDER STATUTE

States that a letter to G.H.V. is being sent by the Magadi Company & that he will be in town on 16 Aug. & will be away until 26th Aug.

Put by
J. Mansell
15/8/35

11. CROWN AGENTS 20.8.35.

Encls. copy of corres. with Magadi Soda Co. regarding the possible purchase of Depot Works at Shimanaei Pier etc. and enquires whether further action should be taken.

Copy to H.Cr. 1f. concn. Air Mail (there is no need for a despatch - No. 8 tells the story.)

(Sgd.) L.B. Freeston.
21.8.35 atonce.

By Air Mail 12. To H.Cr. Transport, Conf. (w.c.11) A/1a 24.8.35.
24.8.35.



9
11

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

0/Kenya 31

TELEGRAMS: "CROWN, LONDON"
TELEPHONE: VICTORIA 7730.

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

Dist. & info on hand available

RECEIVED
21 AUG 1935
C. O. REGY.

20th August 1935

Sir,

Not

With reference to your letter No. 38060/1/35 of the 5th July, requesting us to approach the Magadi Soda Company Limited with regard to the possible purchase of the Company's Depot Works at Shimanzi Pier, including the Branch Line leading to these Works, I have the honour to enclose a copy of correspondence with the Company. We shall be glad to know whether the Secretary of State desires us either to ask the Company for any further information, or to make any further representations to them at this stage.

- 12. 7. 35.
 - 13. 8. 35.
 - 15. 8. 35.
 - 16. 8. 35.
- and enclosures.

I have the honour to be,

Sir,

Your obedient servant,

for Crown Agents.

(2) 27/8/35

The Under Secretary of State,
COLONIAL OFFICE.

AV

CA

LETTER FROM THE CROWN AGENTS FOR THE COLONIES TO THE
SECRETARY, THE MAGADI SODA CO.LTD.

4, Millbank,

12th July 1935.

Sir,

We are informed by the Colonial Office that the Kenya and Uganda Railways Administration are considering the possibility and desirability of acquiring from your Company the Depot Works at Shimanzi Pier including the branch line leading to those works,

2. We are consequently requested by the Colonial Office to ascertain what sum would be in fact the purchase price on the basis of the relative agreement respecting the lease of the Ports, Branch Railway line etc. (Clause 12), and we shall be obliged if you will furnish us with calculations in detail of such purchase price.

3. I have at the same time further to enquire whether, in view of the very low rate allowed for depreciation in the relative clause of the agreement, quoted above, your Company would be prepared to negotiate with a view to the acceptance of a smaller agreed sum in order to facilitate a purchase.

I am, Sir, etc.,

The Secretary,
The Magadi Soda Co.Limited,
Imperial Chemical House,
Millbank, S. W. 1

LETTER FROM THE SECRETARY, THE MAGADI SODA CO. LTD. TO
THE CROWN AGENTS.

Imperial Chemical House,
Millbank, London. S. W. 1
13th August 1935.

Gentlemen,

With further reference to your letter of the 12th July, in which you informed us that the Kenya and Uganda Railways Administration were considering the purchase of our Depot Works at Shimanzi, Mombasa Island, we now beg to reply as follows:-

The purchase price of the whole of the property in question, on the basis of Clause 12 of the agreement respecting the lease of the Port Branch Line, etc. is £70,217. 19. 8, this figure being arrived at in the following manner:-

Agreed amount of capital outlay as at date of lease 20th March 1928	£71,477. 13. 6.
Deduct depreciation at the rate of 1% per annum on a diminishing value from 20th March, 1928 to 31st December 1935	<u>5,355. 9. 6.</u> 66,122. 4. 0.
Additions at cost less depreciation at 1% per annum from completion date to 31st December 1935.....	355. 18. 0.
Betterments as valued less depreciation at 1% per annum from completion date to 31st December 1935.....	<u>3,739. 17. 8.</u>
	<u>£70,217. 19. 8.</u>

The additions above-mentioned include the following

items:-

<u>Work completed in 1930</u>	
Installation of electric lighting on Roads, Gentries and Pier.....	£92. 14. 0.
Modernising Port Manager's House....	155. 9. 0.
Modernising Engineer's House.....	62. 2. 0.
<u>Work completed in 1931.</u>	
Floating Fenders to Pier.....	<u>256. 0. 0.</u>
	£566. 5. 0.
	/Less

12

Less:-		
Indian Bungalow demolished in 1932	£100. 0. 0.	
Sundry steel joists sold		
in 1934.....	88. 18. 4.	188. 18. 4.
		<u>£377. 6. 8.</u>
Less depreciation, as above.....		21. 8. 8.
	Total....	<u>£355. 18. 0.</u>

The betterments above-mentioned include the following

items:-

<u>Job</u>	<u>Year in which completed</u>	<u>Cost</u>	<u>Betterment Value</u>
New Electric Motors and control gear.....	1929	£1,407.7.7.	£350
Reconditioning Engineer's House.....	1930	74.1.9.	74
Reconditioning Port Manager's House and Office.....	1931	674.16.6	675
Re-Roofing Godowns.....	1931	10,215.14.3	2,382
Re-roofing Port Manager's House and Office and Engineer's House.....	1931	<u>1,478. 9.4</u>	<u>420</u>
		<u>13,550. 9.5</u>	3,901
Less depreciation, as above.....			<u>161.2.4.</u>
	Total....		<u>£3,739.17.8.</u>

For the purpose of assessing the value of the betterments under Clause 12 of the lease, we have used the values shown in the last column above, which represent the estimated improvement values of the buildings and plant as a result of the work done.

Having regard to the liberal allowances made in assessing the value of the betterments, and also to the fact that the whole of the Depot Works have been continually maintained in good order and repair, we trust that the figure

/of

of £70,217. 19. 8, at which the property is now offered, will meet with the approval of the Kenya and Uganda Railways Administration, and we shall be glad if you will let us know in due course if this is so.

Yours faithfully,

For THE MAGADI SODA COMPANY LIMITED.

(Sgd) ?

Secretary.

LETTER FROM THE CROWN AGENTS FOR THE COLONIES TO THE
MAGADI SODA CO.LTD.

4, Millbank, S. W. 1

15th August.

Gentlemen,

I have to acknowledge the receipt of, and to thank you for, your letter of the 13th August about the purchase price of the Depot Works at Shikanzu Pier, including the Branch Line leading to those Works.

We will send a copy of your letter to the Colonial Office, but, before doing so, should be obliged if you would let us have a statement shewing in detail how the three amounts (£5,355. 9. 6., £21. 8. 8. and £161. 2. 4.) shown for depreciation, are arrived at.

I am, Gentlemen, etc.

The Magadi Soda Co.Ltd.,
Imperial Chemical House,
Millbank, S. W. 1

LETTER FROM THE SECRETARY, THE MAGADI SODA COMPANY LTD.
TO THE CROWN AGENTS.

Imperial Chemical House,
Millbank,

16th August 1935.

Gentlemen,

We thank you for your letter of the 15th August and as requested attach a Statement showing how we have arrived at the three amounts shown for depreciation in our letter of the 13th instant.

Yours faithfully,

for THE MAGADI SODA COMPANY LTD.

(Sgd)

Secretary.

THE MAGADI SODA COMPANY LIMITED.VALUATION OF PORT, BRANCH LINE, ETC. AT SHIMANZI.

Details of depreciation deducted from Agreed
Amount of Capital Outlay as at 20th March 1928.

	£
Agreed value as at 20th March, 1928.....	71,477.675
Depreciation to 31.12.1928 (say 9 months) at 1%..	<u>536.082.</u>
Value as at.... 31.12.1928.....	70,941.593
Depreciation to 31.12.1929.....	<u>709.416.</u>
Value as at.... 31.12.1929.....	70,232.177.
Depreciation to 31.12.1930.....	<u>702.322.</u>
Value as at.... 31.12.1930.....	69,529.855
Depreciation to 31.12.1931.....	<u>695.290.</u>
Value as at.... 31.12.1931.....	68,834.557
Depreciation to 31.12.1932.....	<u>688.345.</u>
Value as at.... 31.12.1932.....	68,146.212
Depreciation to 31.12.1933.....	<u>681.162.</u>
Value as at.... 31.12.1933.....	67,464.750
Depreciation to 31.12.1934.....	<u>674.647.</u>
Value as at.... 31.12.1934.....	66,790.103
Depreciation to 31.12.1935.....	<u>667.901.</u>
	<u>666,122.202</u>
Total depreciation charged above....	£5,355.473
	<u>£5,355. 9. 6.</u>

Details of Depreciation on Additions

Additions during 1930.....	£ 310. 25
Depreciation to 31.12.1931.....	<u>3. 102</u>
	307. 148
Additions during 1931.....	<u>256.</u>
	563. 148
Depreciation to 31.12.1932.....	<u>5. 631</u>
	557. 517
Demolitions during 1932.....	<u>100.</u>
	457. 517
Depreciation to 31.12.1933.....	<u>4. 575</u>
	452. 942
Additions or demolitions 1933.....	<u>Nil</u>
	452. 942
Depreciation to 31.12.1934.....	<u>4. 529</u>
	448. 413
Sales during 1934.....	<u>88. 916</u>
	359. 497
Depreciation to 31.12.1935.....	<u>3. 905</u>
	355. 902
	<u>£ 21. 432</u>
Total depreciation charged above	<u>£ 21. 8. 8.</u>

Details of Depreciation on Betterments.

	£
Betterments during 1929.....	350.000
Depreciation to 31.12.1930.....	<u>3.500</u>
	346.500
Betterments during 1930.....	<u>74.000</u>
	420.500
Depreciation to 31.12.1931.....	<u>4.205</u>
	416.295
Betterments during 1931.....	<u>3.477.000</u>
	3.893.295
Depreciation to 31.12.1932.....	<u>38.933</u>
	3.854.362
Betterments during 1932.....	Nil
Depreciation to 31.12.1933.....	<u>38.544</u>
	3.815.818
Betterments during 1933.....	Nil
Depreciation to 31.12.1934.....	<u>38.158</u>
	3.777.660
Betterments during 1934.....	Nil
Depreciation to 31.12.1935.....	<u>37.176</u>
	£3,739.884
	<hr/>
Total depreciation charged above	£ 161.116
	= £161. 2. 4
	<hr/>

C. O.

Mr. Jackson B/S

Mr.

Mr.

Mr. Parkinson

Sir G. Tomlinson

x Sir C. Bottomley B/S

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

38060/1/32

Key-

Handwritten scribble

C. O.
A B AUG
D

9 AUG 12

DRAFT.

H. F. Marriott Esq.

(letter to be marked
than inserted)

Dear Marriott

I have now
written to Sir Joseph
Byrne about the Shuman
negotiations, and it will
be convenient if Nagata
will ^{now} reply to the Crown
Agents' letter. ^{on signature of peace.} A copy of
your letter to me of July
29th is being sent, as
you suggested, to the
High Commission.

We are much indebted
to you, as usual, for all
the trouble you have taken
Yours sincerely

(Signed) W. C. BOTTOMLEY

2/12
FURTHER ACTION.

C. O.

Mr. *Frederick S. J.*

Mr.

Mr.

Mr. Parkinson

Sir G. Tomlinson

* Sir C. Bottomley *sp*

Sir J. Shuckburgh

Permt. U.S. of S.

Party, U.S. of S.

Summary of State

38060/1/35

Kenny

H.F. for Sir C. Bottomley

Air Mail

[Signature]

9 AUG 1935

DRAFT

Very dear Sir

A. de V. Wade Esq. C/O. O.S.E.

(including the addition)

You will be aware
(in your capacity of High
Commissioner) from the
S. G.'s Transport despatch
(confidential) of July 5th
that H.F. Marshall has
been brought into the
discussion about the
surrender of the Nagasaki
Port assets. Marshall
has subsequently sounded
the Nagasaki Board, and
I now enclose a copy of

FURTHER ACTION.

his letter summarizing the results. No
doubt you and Rhoads will be interested;
but you will probably agree that any
settlement that may be reached should
be on the basis of official correspondence.

I prefer, therefore, that as soon as
the Crown Agents have replied, ^{-as a price-} to the C.O.
letter of July 5th (copy enclosed in the

despatch of that date), we should let
you know by air mail despatch or telegram.

You will then be in a position to formulate

and send home your proposals for
the conditions of lease (para. 6 of your
Frankfurt despatch of May 21st); bearing

in mind that the more closely they
approximate to the terms proposed by

Parrot, the easier it will be to
persuade Mayors to accept them.

Yours sincerely

(W. G. Bottomley) W. G. BOTTOMLEY.

Hugh F. Maxwell

Defensible

21
7

TELEPHONE HOLBORN 8848

RECEIVED
JUL 1935
H. O. BECK

AFRICA HOUSE
KINGSWAY
LONDON, W.C. 2.

1935

17, Old Broad Street,
London, E.C. 4.

My dear Mr. Beck:

Thank you for the copy of the report on the
Survey of the ...

I have now finished this report and I
will be ready to send you a copy out the
details on the lines mentioned in your report. I
have considered the various ideas of the ...
and I am glad to see that the ...
... the ...
... the ...
... the ...

I have obtained the agreement of the ...
to carry out the preparation for this report.

The inclusive cost to ...
the past three years shows that a reasonable charge for the

*Have actually
not read
H. O. Beck's*

Copy to ...

Chas. A.

- 2

railway for doing the whole of this work will be 4/- a ton up to 20,000 tons a year and 3/6 a ton for any tonnage in excess of that amount in the same year.

Small consignments up to 200 tons may have to be loaded by Lighter if it is not convenient to bring the ship alongside the Pier. Where this is done, up to this maximum the Company is willing to pay an extra 3/- per ton shipped, which I understand is their present rate.

Other conditions are :-

Agadi to have the preference for storage capacity at the port up to 7,500 tons and Agadi agrees to store any surplus required at the Lake, provided the Railway guarantees facilities for railage from the Lake to the port so that no shipment shall be held up through lack of storage at the port.

If the Government uses any of the Agadi storage room, then the Government must provide ample truckage and working arrangements for immediate shipment on any Agadi order and, provided the Company has the soda ready to deliver to the Railway, the Government must guarantee against any charge for demurrage on the part of ships through soda not being ready for shipment at the port.

If maize or other Government transported commodity is utilizing the pier and a ship arrives for soda and cannot be taken alongside, the Government can either

railway for demurrage. The whole of the work will be 4/- a ton up to 20,000 tons a year and 3/6 a ton for any tonnage in excess of that amount in the same year.

Small consignments up to 200 tons may have to be loaded by Lighter if it is not convenient to bring the ship alongside the Pier. Where this is done, up to this maximum the Company is willing to pay an extra 3/- per ton shipped, which I understand is their present rate.

Other conditions are :-

Agadi to have the preference for storage capacity at the port up to 7,500 tons and Agadi agrees to store any surplus required at the Lake, provided the Railway guarantees facilities for railage from the Lake to the Port so that no shipment shall be held up through lack of storage at the port.

If the Government uses any of the Agadi storage rooms, then the Government must provide ample truckage and working arrangements for immediate shipment on any Agadi order and, provided the Company has the Soda ready to deliver to the Railway, the Government must guarantee against any charge for demurrage on the part of ships through soda not being ready for shipment at the port.

If maize or other Government transported commodity is utilising the pier and a ship arrives for soda and cannot be taken alongside, the Government can either

but I think the above is an arrangement which is reasonable to all parties and will bear investigation in detail to confirm the accuracy of the calculations.

I should think it quite likely that General Rhodes would like to have the fort in his hands some time before the maize crop is ready for shipment so that he can get his organisation in working order, and therefore, if you send this proposal out and get his approval by cable, I can get all the main points passed by the Magadi Board and the Magadi Port Manager can work in with the Railway Authorities until such time as they wish to take complete charge.

I have obtained the agreement of the Magadi Board to all the above points.

Yours sincerely
H. J. Mervin

C. O.

Mr. Grossmith.

Mr. Flood 26

Mr. Duncan Secretary Ministry. H.D.

Sir C. Parkinson.

Sir G. Tomkinson.

X Sir C. Bottomley. 3.7 f

Sir J. Shuckburgh.

Parnt. U.S. of S.

Parnt. U.S. of S.

Secretary of State.

BY AIR MAIL

~~CONFIDENTIAL~~

DOWNING STREET,

June, 1935.
5 JUL 1935

DRAFT. DESPATCH

TRANSPORT

KENYA-UGANDA

HIGH COMMISSIONER.

Confidential

Sir,

I have, etc., to acknowledge the receipt of your confidential Despatch of the 21st of May regarding the question of the exercise by Government of the option reserved to it under Clauses 11 and 12 of the Lease of the Port, Branch Railway Line, etc., entered into with the Magadi Soda Co., Ltd.

2. As regards the interpretation to be placed upon the last paragraph of Clause 12 of the Lease, I am informed that it was undoubtedly intended that the price payable ^(on purchase) by Government, should be reduced by one

per

*To Cass Hand
copy drafts
To Mr. [unclear]
[unclear]*

copy [unclear]

copy to S.A. [unclear]

FURTHER ACTION.

*Copy to Gov. Kenya
L.H. conf.*

per cent per annum, and ~~that~~ on the

legal interpretation, I am advised

that the figure payable must be

regarded as being a notional ^{al} ~~price~~

price fixed year by year by a

deduction ^{each year} of one per cent ^{of the sum} for

depreciation. ^{which would have been made had provisions been made at the beginning of the past year.}

^{and I enclose a copy of a letter addressed to Mr. P. Marshall who called at the Colonial office and discussed the point.}
Therefore I have, accordingly, requested ^{for the Govt.}

the Crown Agents to initiate discussions with the Nagadi Soda Company Limited on the lines proposed in the last

paragraph of your despatch. A copy

of the letter to the Crown Agents is

enclosed.

I am somewhat in doubt as regards your proposal to lay down other

terms as conditions of renewing the

franchise granted to the Company

in respect of ^{their obligation} ~~the application~~ under

the Railway Lease. It would seem that

it is quite impossible ^{in present circumstances} for the Company

to ~~supply~~ ^{supply} 100,000 tons of soda goods per

annum, and to impose onerous terms

might well drive the Company out of

business.

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parms. U.S. of S.

Party, U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

^{altogether} business. I understand, however, that

the Company will be quite ready to

negotiate as to ^{the (to be paid to them)} price and, no doubt,

on the other matters when ^{the} a price is

agreed.

I am, etc.

2. a copy of this despatch is being sent to the Governor of Hongkong for his information.

I have

(Sgd.) MALCOLM MacDONALD

4

- Mr. Grossmith. ^{2/6}
- Mr. Flood 26
- Mr. Duncan Secretary Assistant.
- Sir C. Parkinson.
- Sir G. Tomkinson.
- X Sir C. Buttley. ^{2/6}
- Sir J. Shackburgh.
- Permt. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

Answered by No 11

DRAFT.

DOWNING STREET,

JUNE, 1935.

5 JUL 1935

THE CROWN AGENTS
FOR THE COLONIES.

Gentlemen,

I am, etc., to acknowledge the receipt of your letter of the 4th of June (reference: O/Kenya 31 a), regarding the interpretation to be placed upon Clause 12 of the Lease of the Port, Branch Railway Line, etc., entered into with the Magadi Soda Co., Ltd., and to inform you that, at the time the Lease was framed, it was undoubtedly meant that the price payable by Government ^{shall} under the proviso in the last paragraph of Clause 12, ^{to} should be ^{from the outset} reduced by one per cent per annum.

(2)
copy to Mr. Tomkinson

High Com 21 May D
 To High Com
 To Mr. Marriott
 To Mr. Marshall

FURTHER ACTION.

and at a recent interview at the Colonial Office Mr. Marriott of the Magadi Soda Co. appeared to place the same interpretation upon it. That interpretation may be assumed in future negotiations with the Co.

Mr. G. D. ...

2 A copy of a despatch from

the High Commissioner for Transport,
Kenya-Uganda is enclosed, in which

Mr. Wade expresses the ^{new} desire that
you should initiate discussions with

the Magadi Soda Co., Ltd., with a
view to ascertaining their attitude

towards the possible purchase by
Government of the Company's Depot

Works at Shimanzi ^{Plant} including the branch
line leading to those works, and a copy of the S. of S. reply is also enclosed.

3. I am to ask you to approach
the Company accordingly, and to ~~endeavour~~
to ascertain what sum they would accept
on the basis of the Agreement, as the

due price, and whether they would, in
fact, ~~accept less~~ ^{be prepared to negotiate with a view} in view of the very
low price envisaged in the Agreement. ^{in view of the low rate allowed for depreciation.}

4. I am to add that it is
possible that some difficulty may be
experienced in ascertaining the exact

"agreement price", since there may be a
difference of opinion as to how much of the
Company's expenditure subsequent to the date of
the lease, may properly be regarded as
"additions or betterments" and how much as renewals
which should not be taken into account.

5) I am also to enclose a copy of
a letter which has been shown
to Mr. H. F. Marriott.

(Signed) J. E. W. FLOOD

C. O.

38060/1/35

Mr. Grossmith. 26/6

Mr. F. Ford 26

Mr. Duncan 18 June, minute. 1/10.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley. 3.7/6

Sir J. Shackleton.

Perm. U.S. of S.

Party. U.S. of S.

Secretary of State.

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DOWNING STREET,

JUNE, 1935.

5 JUL 1935

CONFIDENTIAL

DRAFT

Sir,

I am, etc., to refer to the your
HUGH F. MARRIOTT, ESQ., conversation at the Colonial Office on the
M.I.M.M., M.I.C.E.

15th of June when the question was discussed

of the Government of Kenya exercising the

option reserved to it under Clauses 11 and

12 of the Lease of the Port, Branch Railway

Line, etc., entered into with the Magadi Soda

Co., Ltd.

2. ~~It is to refer you that~~ The Crown

Agents for the Colonies have been asked to

approach the Company with a view to

ascertaining what sum they would ^{agree} accept, on

the basis of the Agreement, ^{to be the} such due price,

^{calculated as provided by the agreement,} and whether they would, ^{be prepared to negotiate} accept less

than upon the sum payable

in view of the very low depreciation ^{(one per cent} ^{rate of}

envisaged in the Agreement. ^{per annum)}

FURTHER ACTION.

As regards the last paragraph of Clause 12, the Crown Agents have been informed that, when the Lease was framed, it was undoubtedly meant that the price payable by Government should be reduced by one per cent per annum.

3 For your personal information, I am to state that the High Commissioner for Transport, Kenya-Uganda, has pointed out that, under the provision of the Lease of the Railway to Lake Magadi, the Company ~~was~~ under ~~an~~ obligation during the year ending ~~the~~ 31st October, 1932 and every subsequent year ending on the 31st October, to despatch by rail, not less than 100,000 of soda goods.

This obligation has, however, never yet been fulfilled by the ~~Company~~ ^{Government}, as under the ~~arrangement~~ ^{arrangement} which has been in force since 1932 and ^{which} continues to operate until the

31st

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Battonley.

Sir J. Stuchburgh.

Parat. U.S. of S.

Parat. U.S. of S.

Secretary of State.

29
31st of October, 1936, the Company has been relieved of its contractual liabilities.

4. The High Commissioner has suggested, therefore, that any further extension of the existing ~~arrangement~~ ^{arrangement} in so far as the Railway Lease is concerned, should be subject to ~~the~~ a revision of the provisions of Clause 11 ~~and~~ of the Lease of the Port, Branch Railway Lines, etc.

The High Commissioner suggests that, in the event of the Company's assets at the Port being acquired by Government, the ~~conditions~~ under which the Company should be allowed to use the ~~arrangement~~ ^{arrangement} ~~of the Port~~ and the ~~arrangement~~ ^{arrangement} ~~of the Port~~ should be based on the following, viz. the whole of the work of handling the Company's exports and imports ^{will} should be taken over in the same way as ~~the~~ ^{all other} cargo is dealt

When, after any extension of the ~~arrangement~~ ^{arrangement} ~~of the Port~~ is being considered, a condition of such extension should be that the Company will agree to a revision of Clause 11 ~~of the Lease of the Port~~ on the basis that

FURTHER ACTION.

dealt

dealt with, and the Company's cargo

^{will}
should be subject to the provisions

of the Harbour Tariff in force from time

to time^a to an agreed special tariff.

In this connection, however, it is to be
understood that, if a purchase were

effected now, such conditions, having

view to the provisions of Clause 11(i)(B)

of the Port Lease, could not be imposed, as part of the terms of purchase,

though, of course, ~~with~~ ~~reference~~ ~~to~~ ~~the~~ ~~same~~ ~~terms~~ ~~of~~ ~~the~~ ~~lease~~, the

negotiations for a purchase the Company

would be asked if they would agree

to them.

Yours etc

(Signed) J. E. W. FLOOD

cl. 11 of the Lease is curiously ambiguous
on rights of separation; but the real difference

between the
company and
the Railway
is that
the Railway
will be
No. 1
No. 2
No. 3
No. 4
No. 5
No. 6
No. 7
No. 8
No. 9
No. 10
No. 11
No. 12
No. 13
No. 14
No. 15
No. 16
No. 17
No. 18
No. 19
No. 20
No. 21
No. 22
No. 23
No. 24
No. 25
No. 26
No. 27
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No. 30
No. 31
No. 32
No. 33
No. 34
No. 35
No. 36
No. 37
No. 38
No. 39
No. 40
No. 41
No. 42
No. 43
No. 44
No. 45
No. 46
No. 47
No. 48
No. 49
No. 50

is very clear (somewhere about £1300)
No doubt they will

be very glad to sell the paper
at a price what this could mean
But they will not necessarily object
to surrendering their rights of free use
and come under the provision of
the Harbour Tariff or even a
special tariff.

to the power of request
to extend the moratorium

in the Railway Lease it has been
stipulated for the Railway
would be doubtful wisdom to do anything
the year even the the eggs are
only silver gilt. We know from
the Company's recent letter that the
a gross risk for their closing down
operation altogether - a few years
time. Any addition to their working
costs could not ~~be~~ ^{be} ~~paid~~ ^{paid} ~~by~~ ^{by} ~~the~~ ^{the} ~~company~~ ^{company}
But this is the case - to the
Company's interest, with the effect of

1/10/33

At what stage the Barnett should be done

- E the dinner. It is really felt that

the whole level of the present first part to be

? Send out with copy, which then

inserted down with the G. on demand to it

Copy this letter with each sample report

The Barnett in short with brief

711427

1928

714 70763
708

1929

70055

1930

69335

1931

693

1932

68662

687

1933

67970

680

1934

67295

4756

966

285

731497

692
688
675

1927

67975

1933

4804

1934

1000

1930

790

1931

980

1932

971

1932

957

1932

957

500

1931

480

1933

480

1934

480

1934

971

490

74240



31
2

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

Not yet available

O/Kenya 31a

TELEGRAMS: "CROWN, LONDON".
TELEPHONE: VICTORIA 7730.

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

RECEIVED
-6 JUN 1935
D.R.

4th June, 1935.

Sir,

With reference to our letter of the 10th April, 1929,
and previous correspondence respecting the execution of certain

No 11.

15565/4

documents relating to the Magadi Soda Co.'s property in Kenya,

8. 4. 35.

I have the honour to transmit a copy of correspondence which has

3. 5. 35.

passed between the General Manager of the Kenya & Uganda Railways

14. 5. 35.

& Harbours and ourselves on the subject of the interpretation to be

placed upon clause 12 of the lease dated 20th March, 1928, of the

"Port, Branch Railway Line, Works and Pier" at Kilindini.

Amst
14

2. After taking into consideration the remarks made by the
Administration's Legal Adviser as given in the General Manager's
letter of the 14th May, we are inclined to remain of opinion that
the interpretation given by us in our letter to the General
Manager of the 3rd May represents both the prima facie meaning of
the clause and its reasonable application having regard to the
circumstances and what might be concluded to have been the
probable intention of the parties. Nevertheless it seems that
ambiguity may be held to attach to the clause.

3. In another somewhat similar case, we were advised by
our Solicitors that 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. If, however, an
Agreement as executed was found to be ambiguous or shown not
clearly to represent the agreement actually come to between the

parties

The Under Secretary of State,
COLONIAL OFFICE.

38

No 24.

10/10/27

parties at the time steps for the rectification of such ambiguity or error could, of course, be considered. In the case of the Agreement in point, the negotiations leading up to it were not conducted by us. According to your letter 10110/27 of the 4th July, 1927, the negotiations with the Company in regard to the preparation of the lease in question were conducted by your Department, and, in the circumstances, I have to enquire what light if any, is thrown, by the records in your Department, upon the intention of the framers on the point raised.

I have the honour to be,

Sir,

Your obedient servant,

For Crown Agents.

COPY OF LETTER FROM THE GENERAL MANAGER, KENYA
 & HARBOURS, TO CROWN AGENTS.

A.7/1284

General Manager's Office,
 Nairobi,
 KENYA COLONY.

AIR MAIL.

8th April, 1935.

Gentlemen,

With reference to clause 12 of the Lease of the Port,
 Branch Railway Line, Works and Pier at Kilindini, dated 20th March,
 1928, entered into by you with the Magadi Soda Co. Ltd., I shall be
 glad if you will consider and advise me on the following point:-

On the assumption that the sums expended by the
 Magadi Soda Co., subsequent to the date of this agreement,
 had been as follows:-

Year.	£
1929	5,000
1930	1,000
1931	500
1932	100
1933	Nil
1934	10,000

and that notice had been given on the 31st December, 1932,
 to purchase the premises referred to in the agreement,
 with effect as from the 1st January, 1934, will you please
 inform me what would have been the purchase price payable,
 and also explain in detail how that purchase price would
 have been arrived at.

The object of the foregoing enquiry is to secure a clear
 interpretation of clause 12 of the Lease, in regard to the
 concluding paragraph of which clause there is some doubt here in
 the Colony.

I am, etc.,

(Signed) G. D. RHODES.

General Manager.

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

AIR MAIL.

3rd May, 1935.

Sir,

With reference to your letter A.7/1284 of the 8th April regarding the interpretation of clause 12 of the Lease of the Port, Branch Railway Line etc. entered into with the Magadi Soda Co. Ltd. dated the 20th March, 1928, I attach a statement indicating that, on the assumptions given in your letter, the purchase price payable on 1st January, 1934, would apparently have been £75,088, to the nearest £. Since it is understood that the purpose is to provide a clear interpretation of the clause, it has been deemed sufficient to shew the figures calculated to the nearest £ only.

2. The interpretation adopted is our own on the basis of the clause itself, and of the whole document of which it is a part, and, pending your further comments, if any, we have not deemed it necessary to consult the Colonial Office, by which Department the Lease in question appears to have been negotiated in detail, or our Solicitors, or, of course, the Company itself, but we shall be pleased to take any such further action as may be desired, on hearing from you again on the subject.

3. It should be noted that, in the case illustrated, following the particulars given in your letter, a relevant expenditure of nil is assumed on the part of the Lessees between the 20th March, 1928 (the date of the Lease) and the 31st December, 1928. If the relevant expenditure for that period was not nil, amendments would be necessary.

I am, etc.,

(Signed)

For Crown Agents.

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

AIR MAIL.

A.7/1284

General Manager's Office,
Nairobi,
KENYA COLONY.

14th May, 1935.

Gentlemen,

I thank you for your letter No.O/Ken.31a of the 3rd May, and note the interpretation placed by you on clause 12 of the lease of the Port, Branch Line, etc. entered into with the Magadi Soda Co.

2. My legal adviser, having examined your letter in the light of the lease, reports:-

"I have read with interest the opinion of the Crown Agents, and, while I agree that the interpretation put by them on clause 12 is feasible, I have some hesitation in accepting it.

My reason is that, until the expiration of one year's notice, no price is payable, nor can a purchase be made. Therefore, it would seem that the years prior to the giving of the notice should not be taken into account, except for the purpose of adding to the capital cost the amounts spent during those years on improvements.

The "previous year" referred to in the proviso to clause 12 would seem to be the year before the date on which a purchase could be made."

3. In the circumstances, I shall be glad to have your further comments on the matter.

I am, etc.,

(Signed) G. D. RHODES.

General Manager.

BY AIR MAIL.



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OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,

NAIROBI,
KENYA.

TRANSPORT
KENYA-UGANDA
CONFIDENTIAL.

RECEIVED
31 MAY 1935
D. O. REGY

21st MAY, 1935.

Sir,

I have the honour to inform you that as a result of experience during the last few years it has become apparent that at certain periods of the year when heavy arrivals of maize, cotton seed, and other exports coincide with the landing of large quantities of imports, some congestion at the port of Mombasa is likely to occur. Should the scheme for the development of a Paper Pulp Industry be proceeded with, the position will be aggravated by regular large shipments of pulp, and also by the increased imports likely to result from the creation of such an industry.

Copy to Sir. (4)

2. The normal development of the territories of Kenya and Uganda will also tend to aggravate the situation, and for some time consideration has been given to the question, as to how the position might be dealt with. Provision will be made for the immediate future without any considerable expenditure, which for some years would not be justified.

3. Attention has been given in this connection to the possibility and the desirability of acquiring from the Nagadi Soda Company the depot works at Shimani Pier, including the branch line leading to these works. Under the provision of Clause II(1) of the Nagadi Port Lease, it is competent for the Government, at any time upon giving

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Encl. to New 15365/34

THE RIGHT HONOURABLE

MAJOR SIR PHILIP CHELLEN-LISTER, G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
PARLIAMENT BUILDINGS, S.W.1.

one year's notice in writing, to purchase the whole or any portion of the demised premises. Clause 12 of the Agreement lays down that the purchase price shall be as follows :-

"The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be the aggregate of the two following sums, namely :-

- (A) The sum of £71,477,13,6. being the agreed amount of the capital outlay made by the Lessees or the Company whose assets the Lessees have acquired on the construction of the Magadi Pier and Depot Works prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon additions or betterments.

Provided that in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year."

4. Under the provisions of the Agreement, as it stands, it is also provided that in the event of the purchase option being exercised, the Magadi Company shall be entitled to the following rights and privileges :-

- (a) "The right without payment to use and work for the purpose of the Lessees' own business in connection with the work of the said deposits of Carbonate of Soda under the Magadi Lease any lines of electric telegraphs and telephone on the demised premises at the date of the notice exercising the said options.
- (b) "The right to have the same facilities over the Branch Railway as though the same were still in their possession.
- (c) "The right to use the rest of the demised premises for controlling storing loading and unloading in connection with soda goods as though the same were still in their possession."

5. It appears from the Agreement that the capital sum of £71,477,13,6. plus the sum referred to under sub-paragraph (B) of the quotation from Clause 12 given above, makes no provision for the depreciation of the Company's assets referred to since the date they were acquired and brought into use, but only for one year's depreciation calculated at one per cent. There is some doubt about the meaning of the Agreement and this is being enquired into, but the apparent absence of provision for proper depreciation to be deducted from the capital outlay on the assets in question is

Particularly

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particularly onerous and the rights and privileges which the Company would still retain in the event of the premises being acquired by the Government under the existing Lease appear unduly favourable.

Exhibit
No 11
15/10/39

6. The Magadi Company, under the provision of the lease of the Railway to Lake Magadi was under obligation during the year ending 31st October 1932, and every subsequent year ending on the 31st October, to despatch by rail not less than 100,000 tons of Soda goods. This obligation has, however, never yet been fulfilled by the Company, as under the provision of the moratorium which has been in force since 1932 and which continues to operate until the 31st October 1936 the Company has been relieved of its contractual liabilities. Any further extension of the existing moratorium so far as the railway lease is concerned should, it appears to me, be subject to a revision of the provisions of Clause II of the lease of the Port, Branch Railway Line, Works and Pier at Kilindini, and also of Clause 12 of that Lease, if the interpretation adumbrated in paragraph 5 above is found to be correct. It would seem that such a revision should provide that the price to be paid to the Company for the purchase of the assets referred to or any portion thereof should be the capital cost to the Company of such assets, less depreciation calculated at the rate of 1% for each year that the assets have been in existence at Kilindini. In the event of these assets being acquired by Government, it appears to me that the conditions under which the Company should be allowed to use the Branch Railway at the port and the premises referred to, should be based on the following, viz. the whole of the work of handling the Company's exports and imports should be taken over by the port in the same way as all other cargo is dealt with and the Company's cargo should be subject to the provisions of the Harbour Tariff in force from time to time or to an agreed special tariff.

7. In my opinion, the Magadi Soda Company has had a very generous consideration extended to it, and on the expiry of the

present moratorium at the end of October, 1936, it is for consideration whether the Company should be either compelled to fulfil its obligations under the railway lease or should agree to the revision of the port lease in the way indicated above.

8. It would appear to be quite possible, in view of the present financial difficulties of the Company, that they would welcome a suggestion for the purchase of their property at Kilindini, at an agreed valuation and subject to suitable conditions on the lines indicated above. In order that such a proposal may receive full consideration here, I request that you will be so good as to ask the Crown Agents to initiate discussions with the Company to ascertain their attitude in the matter. These proposals at the present stage do not involve the Government of Kenya but a copy of this despatch is being sent to them for their information.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Archibald

HIGH COMMISSIONER.