

1925

KENYA

567

33119

DATE

17th July, 1925

English, S.S.M.

English Navigation and Trading Co.
Loss of S.S. Invaliki

Discusses amount of compensation
award, states grounds on which it is
considered that Messrs Burchell's offer is
unequal and suggests settlement (in enclosure)

MINUTES at £5000

M. Burchell,

Ref 32029

H/B

Mr. Burchell's offer of £5000
is not equal to the value of the
ship and cargo. The value of the
ship and cargo is estimated at
£10,000. The offer of £5000 is
therefore only half the value of
the property lost. It is suggested
that the offer should be increased
to £10,000. The offer of £5000
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property lost. It is suggested
that the offer should be increased
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4/26/25
9 26 OCT 1925
M. A. S.

Copy (no copy of) E. Burchell
1927

Previous Page

O.A.C. 43976

Phone:
666 Holborn.

25, Broom's Buildings,
LONDON, E.C. 4.

17th July, 1928.

33119

the
Mr. Hon. L. S. Amery,
His Majesty's Secretary of State
for the Colonies,
WHITEHALL, S.W. 1.

569

My East African Solicitor, Mr. Harrison, before sailing
from England handed me a copy of your letter of June 23rd.

I much regret that he had not an opportunity of seeing you
personally after Messrs Marshall's interview with my London
Solicitors in order to satisfy you as to the justice of our claim
in respect to the loss of the steamer "Seahill".

Messrs. Marshall, on behalf of the Kenya Government, made
an offer through our Solicitors of a sum approximately
£2,000 in lieu of £25,000 to which we are legally entitled.

In doing so they desired to get aside the definite award of
the Arbitrator appointed by the Kenya High Court, and to replace
it by their own valuation of the steamer.

I understand that our position is unassailable as may perhaps
be inferred from the minutes of the members of the Privy Council
when giving leave to appeal.

However, I do not wish merely to emphasise our legal position,
but I am most anxious that you should realise fully the justice
of our claim on moral grounds and therefore invite your attention
to the following facts:

The Kenya Government now contend that a steamer ten years old,
originally costing £25,000, had only a value of about £1,100 in
1918.

This is an obvious fallacy, as it is an accepted fact that at
that period, owing to the war, shipping values all round had risen
to such a high level that ships were being regularly sold for two,
three and four times their original cost.

Also, between 1917 and 1918 our Company expended well over
£1,000 in recommissioning this steamer.

There were good grounds, therefore, for us to anticipate a
higher award, especially as the valuations sent out by the builders

and by independent experts were considerably larger than that given by the Arbitrator.

Counsel for the Crown, however, objected to these valuations being put in, and it was at his request that the decision as to the value was left to Mr. Fraud as an expert in shipping matters, and not as an Arbitrator.

Mr. Fraud was appointed Arbitrator by the Kenya High Court. He was General Manager of the Union Castle line, and probably the best expert on shipping in the country.

For your information I enclose a copy of our Solicitors' reply to Messrs. Burchell, and I feel that if we are to accept our Solicitors' suggestion and agree to waive the £200 already accorded to us for costs and interest we are making a considerable sacrifice to meet the Kenya Government. Moreover as in addition to this sum there will probably be roughly a further £1,000 in costs and interest if payment has to be enforced by the Privy Council which must inevitably fall on the Kenya Government.

I would also invite attention to the fact that our Company during the war lent the Government absolutely free of cost for a period of nearly ten years their ocean-going steamer the "Bajans".

We had the thanks of the East African Government as well as those of the Naval Authorities. The latter's letter of reed as "that our ship had been of incalculable value to them and had practically saved the situation at sea."

All these circumstances were probably quite unknown to the Government's Legal Advisers, and we have not hitherto referred to them, but should we obtain no special consideration on these grounds, we feel strongly that they increase the Government's obligations to meet out to us fair treatment.

In view of the fact that payment has not as yet been delayed for over seven years thereby incurring great hardships on us as private individuals, I respectfully urge that the obligations of the Crown may be discharged without further delay.

I have the Honour to be,
Your obedient servant,

The English Navigation & Trading Co., Ltd.

L. S. B. G. B. G.
Director

10th July, 1931.

Dear Sir,

REPLY TO THE STATEMENT OF THE DEFENDANTS**THE DEFENDANTS' STATEMENT****THE DEFENDANTS' STATEMENT**

Reference is made to the interview with you on the 27th instant on the subject of the claim of the defendants the matter you then made, in which it was stated that they unhesitatingly declined to maintain it.

When representing their readiness to accept an equitable adjustment of their claim our clients naturally did not anticipate that the House Government would attempt to repudiate the award of £1,000 already made in their favour especially in view of the fact that the arbitrator was not only appointed by the High Court of Hong Kong but also that he acted in the matter as an expert at the express request of Council for the claim with the concurrence of the Company's directors.

The claimant was of course also awarded their costs and there is in addition a considerable sum due for interest, the latter being that awarded by Council for the claim when applying to the High Court for an adjournment some 18 months ago, in which they agreed that interest on the amount of the award

should run as from that date. The total amount therefore due to our Clients to date is approximately £8,000.

If a settlement is not now arrived at the claim to enforce the award will in due course come before the Privy Council, and this will naturally entail considerable further expense. It is with a view to avoiding this and the consequent delay that our Clients have expressed their willingness to accept some small reduction in the amount that is legally due to them, but we are constrained to add that the offer submitted by you does not in our view afford a basis for negotiation of a fair and reasonable settlement.

As a suggestion we may say we are prepared to advise our Clients to waive the question of costs and interest and to accept by way of early settlement the sum of £8,000.

Yours faithfully,

Esq. Mr. Burchalls,
 5, The Sanctuary,
 Westminster,
 S. W. 1.

Serial 27.735

18119/1905 Kenya

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Mr. Strachan

Mr. Skerrett

Mr. Davis

Mr. Grindle

Mr. Masterton

Mr. Ramsby-Gore

Mr. Emery

Guid

AC

Handwritten scribbles

Downing Street,

4 NOV 1905

1905

RAFT

M
C. S. G. GARDNER, Esq.

Sir,

Sir,

Copy from ...

I am, &c., to ask the receipt of your letter of the 17th July, regarding the claim of the English Navigation and Trading Company Limited in respect of the lease of the S.S. "Whilli", and to inform you that a copy of your letter is being sent to the Acting Governor, Kenya.

Jay

for his consideration.

I am, etc

W. A. BOTTOMLEY.