

1924

KENYA

37

53710

15 NOV

DATE

14th November 1924

Messrs.
Sutton, Ginnamney
& Oliver

CIRCULATION

Mr. Burke
Mr. B. M. ...

U.S. of S.

U.S. of S.

U.S. of S.

Secretary of State.

Reconstruction of Magadi Soda Coy

Sends copies of the revised draft ²⁻¹⁶ of railway leases, with suggested amendments shown in red ink, & hopes to final draft Deed of Surrender on 15th or 17th inst.

Previous Paper

S/52837

MINUTES

The draft leases have been further amended after your discussion with Mr. Sutton Chairman of the Board herewith for case

S.G.
18/11/24.

hd

Subsequent Paper

S/54427

Unbound copy...

1537/1920
W.C.S.
18/11/24
at law

List of further amendments to the draft lease
entered with the letter of 14th Nov. from Messrs. Sutton
Omnium and Oliver.
hatch lease

Clause 1. (E)

Insert marginal heading "Soda
Goods"

1. (I) Reletter as (F)

Clause 5 (U). (B)

Line 5. After "but", delete "no"
and insert: "the amount making
good such deficiency shall not
also be taken as part of the
tonnage stipulated for the latter
year: No"

After "tonnage" delete "of"
and substitute "in"

Line 6: After "making" delete "up"
and substitute "good"

~~Clause 5 (U) (C) delete the whole clause~~

Clause 5 (U). (C)

Line 8. after "freight" delete
"in respect of" and substitute

"for"

Line 12. delete "2/-" and substitute
"two shillings"

Line 13. After "lease" insert

Copy Messrs Sutton 18 Nov 24

the words:- "of the Railway to take
Nagadi"

Railway lease

Page 1. Para 2, lines 5 and 6.

Insert the date "1st of
November, 1924"

Para 4. Lines 6 and 7

Insert the date "1st of
November, 1924"

Clause 4 (iv) (B)

Line 5. after "but" delete
"no" and insert "the amount
making good such deficiency
shall not be taken as part of
the tonnage stipulated for
the latter year. No"

After "tonnage" delete
"of" and substitute "in"
line 6 delete "up" and
substitute "good"

Railway lease (cont'd)

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Clause 4 (iv) (c)

Line 7. Delete "in respect of the
period" and substitute "for the period"

Clause 11. (B)

Delete whole clause and substitute
the following:-

"(B) In each year during the first period of five
years and thereafter until the same shall be increased
as hereinafter provided the rate shall
according to the total weight of soda goods
carried be as follows:-

Total Weight Carried	Rate per ton for every ton carried
Not exceeding 50,000 tons	18s. Od.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. Od.
Exceeding 150,000 tons	16s. 6d.

Provided that ~~whenever~~ whenever
in any year the total weight of soda
goods carried shall be greater than
50,000 tons or greater than 150,000 tons
respectively, the amount payable in
respect of freight shall not be less
than the amount which would
be payable on 50,000 tons or 150,000 tons
as the case may be.

Clause 4(1)(c)

Line 7 Delete "in respect of" the said period and substitute "for the period"

Clause 11. (B)

Delete whole clause and substitute the following :-

"(B) In each year during the first period of five years and thereafter until the same shall be increased as hereinafter provided the rate shall according to the total weight of soda goods carried be as follows :-

Total weight Carried	Rate per ton for exemption carried
Not exceeding 50,000 tons	18s. Od.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. Od.
Exceeding 150,000 tons	16s 6d

Provided that ~~whenever~~ whenever in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons respectively, the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be

Clause 11 (c)(1)

Delete the whole sub-subclause
and insert:-

"(C)(1) At the expiration of the
first and every subsequent period of
five years the General Manager may
increase the rate for the time being
payable but so that the rate in force
in each year during the second or
third period shall not exceed the
following:-

9 Total weight carried	Rate per ton for each ton carried
Not exceeding 150,000 tons	20s Od.
Exceeding 150,000 tons	18s Od.

Provided that whenever in
any year the total weight of soda goods
carried is shall be greater than 150,000
tons, the amount payable in respect of
freight of all is to be less than the
amount which would be payable on
150,000 tons.

Clause 21. Line 14. Delete parenthesis

Line 19. Delete all words

between "ball short of" and "then
and in every such case" and
insert the following :-

"a sum equal to the aggregate
amount of a Railway rate of seventeen
shillings and eight pence and five eighths
of a penny per ton on the freight despatched
by Rail ~~or~~ speed to be despatched by Railway
during that year and the amount payable
by way of royalties under the Nagadi
Lease (provided that for the purpose of this
clause such royalties shall be deemed
to be payable from the date of these presents."

Clause 11 (c) (i)

Delete the whole sub-subclause and insert:-

"(C)(i) At the expiration of the first and every subsequent period of five years the General Manager may increase the rate for the time being payable but so that the rate in force in each year during the second or third period shall not exceed the following:-

Weight carried	Rate per ton for each ton carried
Up to 100 tons	20s. 0d.
Over 100 tons	18s. 0d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 150,000 tons, the amount payable in respect of freight of all goods be less than the amount which would be payable on 150,000 tons.

Clause 21. Line 14. Delete parenthesis

Line 19. Delete all words

between "ball short of" and "then
and in every such case" and
insert the following :-

"a sum equal to the aggregate
amount of a Railway rate of seven shillings
and eight pence and five eighths
of a penny per ton on the freight despatched
by Railway agreed to be despatched by Railway
during that year and the amount payable
by way of royalties under the original
lease (provided that for the purpose of this
clause such royalties shall be deemed
to be payable from the date of these presents")

SUTTON, O'BRIEN & OLIVER.

F. G. OLIVER

H. M. O'BRIEN

TELEGRAPH ADDRESS "O'BRIEN", LONDON.

TELEPHONE NO. 1228 } LONDON WALL.
NO. 2316 }

53710

15 NOV 24

353

3 & 4, GREAT WINCHESTER STREET,

LONDON, E. C. 2.

1462/1924.

15th November 1924.

Sir,

Magadi Soda Company Limited.

As arranged to-day at the meeting with Mr. Oliver

-- we beg to hand you herewith two prints of the Magadi Lease and the Railway Lease shewing the amendments discussed this morning in red ink

Mr. Oliver will, of course, be glad to attend you to discuss these documents further if you think it desirable.

We expect to be in a position to send you a draft of the Deed of Surrender to-morrow or on Monday.

We have the honour to be,

Sir,

Your obedient servants,

Att. O'Brien

The Under Secretary of State,
Colonial Office,
S.W.1.

KENYA COLONY AND PROTECTORATE.

Lease

OF

**LAKE MAGADI AND OTHER LANDS IN KENYA
COLONY AND PROTECTORATE FOR WORKING OF
SODA DEPOSITS.**

DATED

192

SUTTON, UMMANNY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

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RIDER Page 1

(E)

^{Miami}
 "Soda goods" all or any of the following

- (i) "Raw soda" that is to say carbonate of soda and/or carbonate of soda or soda mixed ~~with~~ ^{with} any other salts as obtained from the Magadi Soda Deposit before calcination.
- ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry
- (iv) "Manufactured soda" that is to say manufactured article or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

KENYA COLONY AND PROTECTORATE.

This Indenture made the _____ day of _____ 192_____

Between The CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and THE MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office at Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part

Whereas the Lessees are desirous of working certain deposits of carbonate of soda at Lake Magadi in Kenya Colony and Protectorate and have agreed to take and the Government have agreed to grant a Lease of the lands and premises hereinafter mentioned for the term and subject to the provisions and conditions hereinafter appearing

Now this Indenture witnesseth as follows that is to say -

1. In these presents the following expressions or terms shall have the following meanings respectively

- (A) "The Colony" means Kenya Colony and Protectorate
- (B) "The Government" means the Government of the Colony being of the Colony
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such
- (D) "The Magadi Soda Deposit" means the deposits of carbonate of soda included in the demise hereby made
- (E) "Raw Soda" means carbonate of soda or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination whether loose or packed
- (F) "Soda" means soda ash, carbonate of soda or other salts of soda as obtained from raw soda as above defined and whether loose or packed.

"Soda Products"

(g) "Soda Products" means soda crystals, caustic soda, bicarbonate of soda and any other commodities or preparations which are recognised as soda products in the chemical industry and whether loose or packed.

"Manufactured Soda"

(h) "Manufactured Soda" means manufactured articles or merchandise of which soda or soda products form the essential or main constituents and whether loose or packed.

"Month"

(i) "Month" means calendar month.

(F)

Demise

2. The Crown Agents for and on behalf of the Government in consideration of the rent and royalties hereinafter reserved and the covenants and conditions on the part of the Lessees to be observed and performed hereinafter contained hereby grant and demise unto the Lessees First all that rectangular piece of land forming part of the Colony and known as Lake Magadi together with all or any the deposits of carbonate of soda therein which piece of land is situate as near as can be ascertained between latitude 1° 40' and 2° 5' South and extends from longitude 36° 10' East to longitude 36° 20' East and is delineated on the map attached to these presents and thereon surrounded by a red line Together with the land on the shores of such lake necessary for working the said deposit as shown on the said map which premises together include an area of approximately 306 square miles And secondly all that triangular piece of land forming part of the Colony and situate near the Northerly end of the Natron Lake which piece of land includes an area of approximately 18 square miles and lies as near as can be ascertained to the Southward of latitude 2° 5' South and between longitude 36° and 36° 5' East and is delineated on the said map and thereon also surrounded with a red line Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search for dig get win and carry away all the Magadi Soda Deposit Together also with full and free liberty and right for the Lessees their servants and agents of access to the Guaso Nyiro and all reasonable facilities for obtaining and leading water therefrom or thereto for the purposes of their servants or agents and for the purposes of the Lessees' operations. and for any other purposes of the demised premises.

And together further with liberty at all times during the said term to do all such things as the Lessees may deem necessary and convenient for the working of the Magadi Soda Deposit and to construct any works ships buildings stores appliances reservoirs water-races roads tramways railways canals and other means of transport in upon over and under the demised lands as they may deem necessary or convenient for effectually exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in or under the demised lands other than the Magadi Soda Deposit and also other than minerals and mineral substances removed in properly working the Magadi Soda Deposit (all which premises other than as aforesaid are hereinafter included in the term "the excepted minerals") with full and free right and liberty for the Crown Agents and the Government and their lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the excepted minerals and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessees as shall be necessary or convenient And in the course of working to let down the surface of the demised lands and the Magadi Soda Deposit and the workings of the Lessees.
- (ii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.
- (iii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring for sinking to or working the excepted minerals.
- (iv) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left as a support for any pit or shaft which may hereafter be sunk to the excepted minerals.
- (v) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.
- (vi) Such part or parts (not being land which is already occupied by any of the Lessees' works or operations or in respect of which the Lessees establish to the satisfaction of the Governor that the Lessees will need the same for the subsequent development or expansion of their works or operations) of the demised lands as the Government shall from time to time think proper to reserve or allocate for native encampments or any similar purpose.

(iii) The first payment of Royalties hereunder shall be in respect of the period from the 1st day of November 1929 to the 30th day of April 1930 and shall be made on the 1st day of ~~May~~ ^{October} 1930.

(iv) Raw soda soda soda products and soda contained in manufactured soda on which royalty has been paid by the Lessees shall not be liable to further royalty or duty when exported from the Colony in their original or any manufactured state.

5. The Lessees for themselves their successors and assigns hereby Lessees' Covenants covenant with the Crown Agents and also as a separate covenant with the Government as follows :--

(i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. To pay rent and royalties

(ii) For the purpose of ascertaining the amount of royalties payable hereunder the Lessees will keep proper books of account and the Lessees will keep such books from the commencement of the term hereby granted as if royalties were hereby made payable during the whole of the said term and permit the Government and any agent appointed for that purpose at all reasonable times to inspect the said books of account and to take copies thereof and extracts therefrom. To keep proper books and permit inspection

(iii) On the 30th day of April and the 31st day of October in each year of the term hereby granted or within 28 days thereafter the Lessees will render to the Government an account showing the amount of raw soda soda soda products and manufactured soda respectively exported from sold and delivered or used for commercial purposes within the Colony during the six months ending on such 30th day of April or 31st day of October and every such account shall be certified by the auditor or auditors for the time being of the Lessees and an account so certified shall as to the figures appearing in such account be binding on the Lessees. To render accounts

(iv) The Lessees will forthwith commence and thereafter during the continuance of the term hereby granted vigorously continue to work the Magadi Soda Deposits in a skilful and workmanlike manner to the full extent and to the best economic capacity and to get win and carry away the Magadi Soda Deposit in accordance with the provisions of these presents fairly and properly and according to the best and most approved method of working deposits of carbonate of soda To work

until the expiration or sooner determination of these presents

Yearly minimum
stockings

(v) (A) Without prejudice to or in any way limiting the covenant by the Lessees lastly hereinbefore contained the Lessees will in each of the years ending on the 31st day of October 1927, 1928 and 1929 get and despatch by Railway not less than 50,000 tons of ~~raw soda and soda~~ ^{soda} ~~products~~ and in the year ending on the 31st day of October 1930 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will ~~export or sell and deliver or use for~~ commercial purposes within the Colony raw soda soda or soda products or soda contained in manufactured soda, as follows: in each of the years ending on the 31st day of October 1930 and 1931 not less than 75,000 tons and in the year ending on the 31st day of October 1932 and every subsequent year ending ~~on the 31st day of October not less than 100,000 tons and~~ ~~no excess of tonnage of any preceding year shall be allowed~~ towards making up a deficiency in any subsequent year. Provided that any breach of this covenant not due to *force majeure* arising from any of the causes mentioned in Clause 14 hereof shall be waived if the Lessees shall within 60 days from and after the day hereby appointed for payment of royalty in respect of the period during which such breach shall have occurred pay the amount which would have been payable for royalty in respect of the said period if the Lessees had duly ~~performed this and the immediately preceding covenant.~~

Francis Hider

Half yearly
minimum payments

(v) (B) The Lessees will pay to the Government or as they shall direct by way of royalties on each of the following days namely the 1st day of October 1930 the 1st day of April and the 1st day of October 1931 and the 1st day of April 1932 a sum not less than £3,750 and on each 1st day of October and 1st day of April thereafter during the continuance of the term hereby granted a sum not less than £5,000.

To pay for soda
lost or wasted

(vi) The Lessees will in case of any waste or unnecessary loss of raw soda by or through any mismanagement or default of the Lessees pay for the raw soda so wasted or lost as if the same had been actually got and exported.

To leave soda
unworked for
support

(vii) The Lessees will leave such quantities of the Magadi Soda Deposit unworked and in such positions for the support of any building now or hereafter to be erected on the demised lands or of any pit or shaft hereafter to be sunk to the excepted minerals as the Crown Agents or the Government or their ~~agents~~ or any person authorised by them may reasonably and properly require.

get and despatch by railway soda goods as follows; in each of the years ending on the 31st day of October 1930 and 1931 not less than 75,000 tons and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October not less than 100,000 tons.

(1) In case where the Lessees shall in any year have made a default to the extent not exceeding 10 per cent of the tonnage stipulated for that year then the Lessees may, in the first three months of the next succeeding year make good the deficiency but any excess of tonnage ~~at~~ ⁱⁿ any year shall be allowed towards making ~~up~~ ^{good} a default in any subsequent year.

The amount making good such deficiency shall not also be taken as part of the tonnage stipulated for the latter year. No

(2) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not liable to be a default arising from any of the causes mentioned in clause 1. shall be waived if the Lessees shall on or before the first day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for royalty and freight ~~in respect of~~ ^{for} the period in respect of which such breach shall have occurred if the Lessees had duly performed the said covenant contained in sub-clause (A) above. For determining such amount the rate of royalty shall be ~~20s~~ ^{10s shillings} per ton and the rate of freight shall be that laid down in a lease of even date with these presents and made between the same parties.

*of the Railway (N.E.)
Lake Nagade*

- (viii) The Lessees will not cause or permit any unnecessary or reasonably avoidable obstruction or interruption to the development by the Crown Agents or the Government or their Lessees or any person authorised by them of the excepted minerals or to the transport conveyance or conversion of the produce thereof or to the exercise or enjoyment of any right or liberty excepted out of the demise hereby made or hereby reserved. Not to obstruct working of excepted minerals
- (ix) The Lessees will keep all roads tunnels watercourses tramways railways engines fixed machinery and other works and conveniences belonging to or used in connection with the Magadi Soda Deposit in good and substantial repair and condition and working order so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit. To keep works in repair
- (x) The Lessees will permit the Crown Agents and the Government and any person or persons authorised by them or either of them in this behalf at all reasonable times to enter upon inspect and examine the demised lands and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and manner of working and managing the same or for any other reasonable purpose. And will cause all such persons to have all such assistance as they may reasonably request from the employees of the Lessees. To permit entry and view
- (xi) The Lessees shall comply with all obligations which may be imposed on them by any general Ordinance for the time being in force in the Colony except only in so far as any such Ordinance shall impose or purport to impose upon the Lessees an export duty on raw soda soda soda products or manufactured soda. To comply with Ordinances
- (xii) In the construction of any works which may interfere with the traffic in any road street path or footway or with any rights of water or other rights or properties the Lessees shall not interfere with public and private conveniences and rights more than may be reasonably necessary and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as may be necessary or proper for the prevention of damage or injury to any property or person. Not to interfere with public or private rights

- (xviii) If the Government shall incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees' works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.
- As to liability for special sanitary measures
- (xix) The Lessees shall provide at or near the site of their works such huts or other accommodation for the use of the native labourers or workmen employed in the Lessees' works and also such hospitals medical officers and attendants medicines and medical stores for the like use as may be necessary.
- Huts or other accommodation hospitals and medicines for use of natives to be provided
- (xx) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the proper treatment of native labourers or workmen.
- Native labour
- (xxi) The Lessees will at all times during the term hereby granted observe the following provisions : -
- As to user of roads and facilities for travellers
- (A) They will allow all roads made by the Lessees upon the demised premises to be used for the public service except roads inside or around their works.
- (B) They will permit travellers to encamp with their servants animals waggons and baggage for a period not exceeding 48 hours on any part of the demised premises which is uncultivated and which is not within one mile of any works or dwelling house and allow travellers and their servants and animals access to any river stream or lake upon the demised premises outside of the Lessees' works.
- (xxii) The Lessees will at the expiration or sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except so far as the Magadi Soda Deposit shall have been worked out under these presents and except also such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Magadi Soda Deposit.
- To deliver up

- (C) Not more than one person shall at any one time be entitled to hold office as a Director by virtue of appointment hereunder.
- (D) Any such appointment shall be in writing under the hand of the Governor and served on the Lessees.
- (E) A Director appointed hereunder shall not require any qualification.
- (F) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.
- (xxv) (A) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised lands the Lessees shall forthwith give notice thereof to the Government. To give notice of finding any excepted mineral
- (B) If any excepted mineral so found can be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall get the same without injury thereto accordingly and hold the same for the Government and both in and after getting the same the Lessees shall take all reasonable steps for the safe preservation of the same.
- (C) If any excepted mineral so found cannot be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall forthwith upon any such discovery cease working so far as necessary for the preservation of the thing found and shall leave their workings at and adjacent to the thing found open for a period of one month for the inspection thereof by the Government and thereafter shall not continue working at or adjacent to the thing found except in accordance with any reasonable instructions given by the Government for the purpose of avoiding injury to the thing found.
6. Provided always and these presents are upon the express conditions following:—
- (i) The Lessees and any Company or Corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four fifths in number of the Directors of the Lessees or any such Company or Lessees to be and remain British

8. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of forty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) the Crown Agents or the Government may enter into and upon any of the demised premises or any adjoining or neighbouring lands or works for the time being held occupied or used by the Lessees together or in connection with the demised premises and may seize and distrain and sell as landlords may do under the laws of England for rent in arrear all or any of the Raw Soda then got and the Soda, Soda products and Manufactured Soda there found and the engines machinery plant animals implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rent and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

Power of distress

9. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of Sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter to re-enter into and upon the demised premises or any part thereof in the name of the whole and to have again re-possess and enjoy the same as in their former estate. And thereupon this Lease and the liberties hereinbefore granted shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein

Proviso for re-entry

May inspect books
and accounts and
examine on oath

18. The arbitrators and umpire shall have full power to inspect the books documents and assets of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

And provide for
costs

19. The costs of the reference and the awards shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

Marginal notes
not to affect
construction

20. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In witness whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their Common Seal to be hereunto affixed the day and year first above written.

Signed sealed and delivered by

one of the Crown Agents for the
Colonies in the presence of

The Common Seal of The
Magadi Soda Company Limited
was hereunto affixed in the
presence of

Directors.

Secretary.

May inspect books
and accounts and
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The Common Seal of The
Magadi Soda Company Limited
was hereunto affixed in the
presence of

Directors.

Secretary.

KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED 192

SUTTON, OMMANNEY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

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KENYA COLONY AND PROTECTORATE.

This Indenture made the _____ day of _____ 192

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of The Government of the Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part.

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the *first* day of *November* 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein.

Lease of Magadi
Soda Deposits

And whereas for the purpose of working the said deposits the Lessees or their predecessors in title have at their own expense constructed the railway hereby demised and the port hereinafter defined upon lands provided by the Government.

Construction of
the Railway and
the Port

And whereas by an Indenture already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto and in the same order the Port hereinafter defined is intended to be demised to the Lessees from the said *first* day of *November* 1924 during such term as the Magadi Lease shall be subsisting.

The Port Lease

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the Uganda Railway Administration hereinafter defined as part of the Uganda Railway.

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained.

Now this Indenture witnesseth and it is hereby agreed and declared as follows:—

Interpretation

1. In these presents the following expressions or terms shall have the following meanings respectively:—

- (A) "The Colony" means the Kenya Colony and Protectorate.
- (B) "The Government" means the Government for the time being of the Colony.
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) "The Uganda Railway Administration" means the Administration or authority for the time being working or managing the Uganda Railway.
- (E) "The Railway" means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (F) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (G) "The General Manager" means the General Manager for the time being of the Uganda Railway.
- (H) "The Magadi Lease" means the first before recited Lease of even date herewith.
- (I) "The Magadi Soda Deposit" means the deposits of carbonate of soda included in and demised by the Magadi Lease.
- (J) "The Port" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

(K) "Soda Goods" means all or any of the following:—

- (i) "Raw soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(L) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that Railway constructed by the Lessees or their predecessors in title wholly in the Colony commencing by a junction with the Uganda Railway known as Magadi Junction and thence passing to a terminus near Lake Magadi together with all lands which have been provided by the Government for the purpose of the construction and working of the Railway and are now in the possession of the Lessees or of the Uganda Railway Administration.

Demise of Railway to Lessees

Together with full and free right and liberty for the Lessees to construct maintain renew repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either of them in along or over the demised premises or any part or parts thereof Provided always that the right and liberty aforesaid shall not be exercised so as to interfere with the working of the Railway by the Uganda Railway Administration under the provisions in that behalf hereinafter contained.

Liberty to Lessees to construct telegraph and telephone lines

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

Exceptions

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the

All other minerals precious stones etc.

(κ) "Soda Goods" means all or any of the following:—

- (i) Raw soda that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) Soda that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) Soda products that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (iv) Manufactured soda that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

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Exceptions

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the

All other minerals precious stones etc.

To hold unto the Lessees for the term of 99 years from the *first* Term day of *November* 1924 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the 1st day of *October* in every year the first of such payments for the first year of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

3. If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall *ipso facto* determine also but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

Lease to determine if Magadi Lease determined

4. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows :-

Lessees' Covenants

(i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid.

To pay rent

(ii) The sole and exclusive control and management of the Railway shall be vested in the Uganda Railway Administration and the following provisions shall have effect :

Sole management of the Railway to be vested in the Uganda Railway Administration

(A) The Uganda Railway Administration shall work the Railway as a branch of the Uganda Railway and as part of the general system of railways operated by the General Manager.

The Railway to be worked as part of the Uganda Railway

(B) The Lessees shall not claim or be entitled to receive from the Uganda Railway Administration any preference or priority whatsoever as to transport or the supply of locomotives or rolling-stock or the maintenance or equipment of the Railway or otherwise howsoever.

No preference to given to Lessees

(C) The Uganda Railway Administration may at their own expense at any time or times make any alteration or addition to the Railway for the purpose of accommodating traffic other than traffic of the Lessees.

The Uganda Railway Administration may make alterations and additions to the Railway

(iii) The Lessees shall pay the charges for freight hereinafter specified at the times and in manner hereinafter provided and shall at all times duly pay all such other charges and all such moneys and do and perform all such acts and things as under the provisions hereinafter in this Lease contained are by them to be paid done or performed.

Lessees to pay freight and observe the provisions hereinafter contained

(iv) (A)
Yearly minimum
commitment by
rail

The Lessees will in each of the years ending on the 31st day of October 1927 1928 and 1929 despatch by railway not less than 50,000 tons of soda goods and in the year ending on the 31st day of October 1930 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will despatch by railway soda goods as follows :- in each of the years ending on the 31st day of October 1930 and 1931 not less than 75,000 tons and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October not less than 100,000 tons.

The amount made
good such deficiency
shall not be
taken as part of
the tonnage
stipulated for the
better year.

If and whenever the Lessees shall in any year have made default to an extent not exceeding 10% of the tonnage stipulated to be despatched by railway for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but ⁱⁿ No excess of tonnage ⁱⁿ any preceding year shall be allowed towards ^{good} such deficiency in any subsequent year.

(C) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not due to force majeure arising from any of the causes mentioned in clause 14 hereof shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for freight ^{for the} in respect of the ~~said~~ period in respect of which such breach shall have occurred if the Lessees had duly performed the covenant contained in sub-clause (A) above.

prepared by the solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

- (c) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.
- (vii) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coal treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof To give notice of finding any excepted mineral
- (viii) (A) If and whenever any of the demised lands shall in the opinion of the General Manager be or become unnecessary for the purposes of the Railway the Lessees shall at any time thereafter upon the request in writing of the Government forthwith surrender the same to the Government. Superfluous lands
- (B) If any difference shall arise as to whether any land is or is not unnecessary for the purposes of the Railway such difference shall be referred to arbitration under the provisions in that behalf hereinafter contained.
- (ix) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony. To comply with Ordinance

Not to interfere
with public or
private rights

(x) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as little as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property.

To indemnify
Government
against claims

(xi) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses which may occur or be incurred or claimed in or by reason of anything done upon the demised premises or any part thereof and if the Government shall make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the Uganda Railway Administration unless the same shall have arisen from some neglect or default of the Lessees.

Contractors to
provide office

(xii) The Lessees shall at all times provide a suitable office on the site of the Railway or the Uganda Railway where notices may be left for or addressed to the Lessees.

No arms or
ammunition to be
sold to natives

(xiii) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees.

No spirituous liquor
to be sold to natives
nor imported except
for Europeans

(xiv) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf.

As to liability of
Lessees to special
sanitary measures

(xv) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Railway the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees

or by the presence of the agents or workmen of the Lessees upon or in the neighbourhood of the Railway pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.

(xvi) The Lessees shall at all times during the term hereby granted **Native labour** comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the suitable treatment of native labourers or workmen.

5. (i) The Lessees shall (if and so far as the same shall not have **Lessees to complete the Railway to carry 160,000 tons per annum** been done before the date of these presents) forthwith complete and equip the Railway so as to be efficient to carry at least 160,000 tons of soda goods in any one year.

(ii) The lessees shall do the work aforesaid in accordance with any directions from time to time given by the General Manager and to his reasonable satisfaction in all respects.

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own **Maintenance** expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order.

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government or the Uganda Railway Administration to fit, equip or maintain the Railway so as to be capable of carrying more than 160,000 tons of soda goods in any one year.

7. The Lessees shall at their own cost do all and any extraordinary **Extraordinary repairs** repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained

8. (i) The Uganda Railway Administration shall provide and **Rolling stock** maintain all locomotives and rolling-stock necessary for the efficient working of the Railway.

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall at their own expense provide and maintain such tank cars, special wagons and conveniences (if any) as the General Manager shall from time to time deem necessary or proper for the carriage of the Lessees' liquid fuel. *Provided nevertheless that the Lessees shall not be entitled to any reduction of freight on liquid fuel by reason of the provision of any cars provided by the Lessees.*

Protection of
Soda Goods in
transit

9. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt.

Loading and
unloading

10. The service of loading and unloading the Lessee's goods at the respective places of departure and destination shall in all cases be performed by and at the sole expense of the Lessees but the service (if any) of loading and unloading at any intermediate place shall in all cases be performed by and at the sole cost of the Uganda Railway Administration.

Rates of freight for
Soda Goods carried
to the Port

11. The rates of freight for soda goods consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Port by the Railway to Magadi Junction and thence over the Uganda Railway shall be as follows:

- (A) For the purposes of this Clause each year shall end on the 31st day of October ~~and the part of a year from the commencement of the term hereby granted until the 31st day of October 1925 shall be reckoned as a year and the period from the commencement of the term hereby granted until the 31st day of October 1929 shall be the first period of five years.~~
- (i) ~~During the first period of five years and thereafter until the same shall be increased as hereinafter provided the rates shall be for the first 50,000 tons carried in any year 18s. per ton and for every ton over 50,000 up to but not exceeding a total of 150,000 tons carried in the same year 17s. per ton and for every ton over 150,000 tons carried in the same year 16s. 6d. per ton.~~
- (ii) ~~At the expiration of the first and every subsequent period of five years the General Manager may increase the rate for the time being payable but so that the rates in force during the second or third period of five years shall not exceed the following: For the first 50,000 tons carried in any year 22s. per ton and for every ton over 50,000 up to but not exceeding 150,000 tons carried in the same year 20s. per ton and for every ton over 150,000 tons carried in the same year 18s. per ton.~~

(B)

In each year during the ^{first} period of five years and thereafter until the same shall be increased as hereinafter provided the rate shall be ~~15¢~~ for each ton carried if the amount carried shall not exceed 50,000 tons; ^{in that year} ~~15¢~~ ^{17.5¢} for each ton carried if the amount carried shall exceed 50,000 tons and not exceed 100,000 tons; and ^{in that year} ~~15¢~~ ^{16.6¢} for every ton carried if the amount carried shall exceed 150,000 tons. ^{each} ~~Provided~~ ^{tons} that the amount payable in any year in respect of tonnage exceeding 50,000 tons or 150,000 tons shall not be less than the amount payable in respect of 50,000 tons or 150,000 tons as the case may be.

C. (1)

At the expiration of the first and every subsequent period of five years the General Manager may increase the rate for the time being payable ^{but} ~~so that~~ ^{the} rate in force in each year during the second or third period of five years shall not exceed the following: 20¢ per ton for each ton carried if the amount carried shall not exceed 150,000 tons, and 18¢ per ton for each ton carried if the amount shall exceed 150,000 tons. ~~Provided~~ that the amount payable in any year in respect of tonnage exceeding 150,000 tons shall not be less than the amount payable in respect of 150,000 tons.

General Manager may increase the rate for the time being payable but so that the rate in force in each year during the second or third period of five years shall not exceed the following:—

Total weight carried.	Rate per ton each ton carried
-----------------------	-------------------------------

Not exceeding 150,000 tons	20s. 0d.
Exceeding 150,000 tons	18s. 0d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 150,000 tons the amount payable in respect of freight shall not be less than the amount which would be payable on 150,000 tons.

Rider on page 10.

(B) In each year during the first period of five years and thereafter until the same shall be increased as hereinafter provided, the rate shall according to the total weight of soda goods carried be as follows:-

Total weight Carried	Rate per ton for every ton carried
Not exceeding 50,000 tons	18s. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 6d.

Provided that ^{whenever} in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons respectively, the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be.

(C) At the expiration of the first and every subsequent period of five years

Rider on page 10.

(B) In each year during the first period of five years and thereafter until the same shall be increased as hereinafter provided, the rate shall according to the total weight of soda goods carried be as follows:-

Total weight Carried	Rate per ton for every ton carried
Not exceeding 50,000 tons	18s. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 6d.

Provided that ^{whenever} in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons respectively, the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be.

(C) At the expiration of the first and every subsequent period of five years.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.
- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

Rates for other goods and fares for passengers

12. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Uganda Railway.

Freight to be payable in advance

13. (i) All freight charges shall be payable to the Uganda Railway Administration in advance.

(ii) Any freight charge not paid in advance shall carry interest until actual payment thereof at the following rates that is to say during the first six months from and after the day on which the same should have been so paid in advance at the rate of £4 per cent. per annum and thereafter at the rate of £6 per cent. per annum.

(iii) The Lessees shall procure the payment of all freight charges not paid in advance to be secured by guarantees to the satisfaction of the Crown Agents.

Demurrage

14. The Lessees shall pay demurrage on trucks belonging to the Uganda Railway Administration according to the rates of the Uganda Railway Administration for the time being in force.

15. Provided always and these presents are upon the express conditions following:

Lessees to be and remain British

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.
- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be

British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise here made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

16. The Crown Agents hereby covenant with the Lessees as Lessees' Covenants follows:-

(i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

For quiet enjoyment

(ii) That the Uganda Railway Administration and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the Uganda Railway Administration or the General Manager.

For acts to be done by the Uganda Railway Administration

17. Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of re-construction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors than and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the same of the whole to re-enter and the

Proviso for re-entry

same to have again re-possess and enjoy as in their former estate. And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

At end of the 99 years' term the Railway and all assets to belong to the Government

18. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

Option to the Government to purchase on sooner determination

19. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

Option to the Government to purchase at any time

20. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

If option exercised, the Lessees to have certain rights

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

Telegraph and telephone lines

(A) The right to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted.

Carriage of goods

(B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed.

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Carriage of goods

(B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed.

Rider on page 15.

"Of royalties under the Nagadi lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and eight pence and five eighths of a penny per ton on the freight despatched by Railway or agreed to be despatched by Railway during that year and the amount payable by way of royalties under the Nagadi lease then and in every such case."

Provided that for the purpose of this clause royalties shall be deemed to be payable on the date of these orders)

21. The price payable by the Government upon a purchase under Price the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

- (A) The sum of £ _____ being the agreed amount of the capital outlay made by the Lessees in the construction of the Railway 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 extraordinary repairs and renewals properly attributable to capital expenditure.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows:—If and whenever in any year ending on the 31st day of October ~~(the part of a year from the commencement of the term hereby granted until the 31st day of October 1926 being reckoned as a year for the purposes of this Clause)~~ during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short ^{of an amount equal} ~~to a Railway rate on the freight consigned during that year of nine sixteenths of a penny per ton mile then and in every such case~~ the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with half-yearly rests from the expiration of the year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

to the aggregate amount of
~~of such less deficiency and eight pence and four eighth of a penny per ton~~
and the amount payable by way of royalties under the Magadi lease

22. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

Rights of purchase not ~~to be~~ other rights

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Notice of these provisions to be endorsed on debentures

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

Property to be conveyed free from incumbrances

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

General Manager may delegate

Members or officers
of Government not
to be personally
liable

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of the
Governor

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be
given to Lessees

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shewn to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

Provision for
arbitration

30. In case and so often as any dispute difference or question shall arise between the parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies

or persons concerning or relating to the subject matter of these presents or any part thereof or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference, and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding upon all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

31. The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

Arbitrators may
make partial awards

32. The arbitrators and umpire shall have full power to proceed in the absence of both or either of the parties after giving to both parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May proceed
ex parte

33. The arbitrators and umpire shall have full power to inspect the books documents and accounts of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

May inspect books
and accounts and
examine on oath

34. The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

And provide for
costs

M. 53710/24 Kenya

C. D.
R 18 NOV
D

18 November 1924

Immediate

Gentlemen

DRAFT.

Sutton, O'Malley
O'Brien,

MINUTE.

- Mr. Keel ^{5/11/24}
- Mr. Bushe 18
- Mr. Bottomley 18 ^{18/11}
- Sir O. Davis
- Sir G. Grindle
- Sir H. Road
- Sir J. Masterton Smith
- Lord Arnold
- Mr. Thomas

J. Carson

Further amendments
(minutes) (the enclosed)

of Lake George
Railway lease
Copies herewith, would
of the
"Mr. Sutton O'Malley
"O'Brien"

Thank you for the receipt

of your letter No 1462/1924, of
the 11th of Nov., forwarding two
copies each of the draft leases
of Lake Rasadi and of the
Railway to Lake Rasadi,
shown in red ink further
amendments made in
accordance with the discussion
which took place at this Office
on the 14th of November.

2 In addition to the
amendments originally made
by you in black ink in the
drafts, and to the amendments
in red ink now shown on the
copies enclosed with your letter

time by means of tables,
as in the draft lease enclosed
with your letter of the 24th of
September. These clauses have
therefore been amended by
the re-introduction of the tables,
modified in the light of recent
discussions.

45739
24.

(ii) Railway lease clause 21.

The discussion of this
clause on the 14th of November was
not exhaustive, and on further
examination it has been
decided to effect a further
amendment in order to
correspond more closely with
the agreement reached between
the S. & S. and the Government,
Hond and Co., as recited
in Section B 7(f) of the
Memorandum of Agreement,
a copy of which was sent
to you with the letter from this

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr.
- Sir C. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Lord Arnold.
- Mr. Thomas.

No. 23752/1924)

Department of the 30th of May

4. Subject to your

concurrence in the amendments
now effected, Mr Amery proposes
that a further ~~revised~~
draft of both leases should
now be printed, in order
that copies may be sent from
~~the~~ ^{this} ~~Dept.~~ ^{Dept.} Messrs Brunner,
Windsor Co. Ltd., for their
views; and I am to request you
to take the necessary steps
to have fresh prints prepared
~~and~~ ^{and} to send an ~~copy~~ ^{copy} of each draft ~~to~~ ^{to} ~~the~~ ^{this} ~~Dept.~~ ^{Dept.}

5. Mr Amery notes that

you will shortly be in ~~possession~~
to forward a draft of the Deed
of Surrender of the former
leases. ~~of the~~

(Signed) G. GRINDLE

No. 23752/1924]

Department [of the 30th of May

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that copies may be sent from
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Nando & Co. Ltd., for their

prints; and I am to request you

to take the necessary steps

to have fresh prints prepared, and
to send ten copies of each draft to this Dept.

5. Mr Amery holds that

you will shortly be in a position

to forward a draft of the Deed

of Surrender of the former

leases. ~~of that~~

(S)

GRINDLE