

1921 (29)

KENYA

30803

REC'D
21 JUN 21

GOVERNOR HORTHEY
CONF
182

DATE
25TH MAY 1921

509

OF CIRCULATION:-

- Mr.
- Mr.
- Mr.
- Mr. Grindle
- Sir H. Lambert
- Sir H. Bead
- Sir G. Fiddes
- Mr. Wood
- Mr. Chatterhill

SUBJECT
ORDERS - IN - COUNCIL

GROWN LANDS COURTS ETC

Requests alterations be made in wording of memo. by Attorney General enclosed indeesp. 21st April.

Previous Paper

MINUTES

Mr. Bealey

MB

21. X. 21

(Copy made from paper back in my case)

~~Mr. Bealey~~

~~Mr. H. Bead~~

This relates to the insertion of the word "ordinarily" in clause 4(3) of the first of Dec with 25541.

It does not affect the remainder of the memo, typed memo. City Court papers for omitting the word, as the decision which has been taken that it shall be omitted.

I now put up for reference of the

to Privy Council (off. memo) 19 June 21

Subsequent Paper
No 32261
No 32262
1921

MINUTES.

MINUTES NOT TO BE WRITTEN
ON THIS SIDE.

2 Off Orders with 25541

~~I find that the first (Class
lands (lands) should have
marginal notes and I have
~~correctly added them.~~~~

We do not usually have marginal
notes in Boundaries Orders
in Council

There is a Council on the 27th
of these Off Orders shd reach
the Council Office next Friday
the 24th

[I find that none of these
Orders has printed or SRO
has marginal notes, so
I send as the 2 Offs without.
They are therefore ready, without
any further copies being
made, ~~ready for~~ for
transmission to the
Council Office]

J.S.H.

22/6/21

J.S.H.

22.11.21

at once

H. J. R.

23/11/21

25th May 1921.

CONFIDENTIAL.

30803
REC'D
REC'D 21 JUN 21

Sir,

lgn
25/5/21

With reference to my Confidential despatch No. 96 of 21st April, I have the honour to inform you that the word "subordinate" occurring in the fourth line of the sixth paragraph of the memorandum by the Attorney General enclosed with that despatch, should be "circuit", the passage thus reading, "The Chief Justice points out that Circuit Courts constantly sit etc."

2. I should be obliged if this correction might be noted and I regret that the error was overlooked in the preparation of the memorandum.

I have the honour to be,
Sir,

Your humble, obedient servant,

Edward M. M. M.

GOVERNOR.

THE RIGHT HONOURABLE

WINSTON CHURCHILL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

1921

KENYA

511

26833

FROM
GOVERNOR NORTHEY
TELEGRAM NO. 275

DATE
26TH MAY 1921

FOR CIRCULATION

SUBJECT

INFERIOR FLAX SEED

Mr.
Mr.
Mr.
Mr. Grindle.
Sir H. Lambert.
Sir H. Road.
Sir H. Fiddes.
Col. Amery.
Mr. Churchill.

Reports Attorney General's opinion on question of latent defect. Contends defect arose not from storage but from defective packing for transit through tropics and that flax control board responsible. Re Wigglesworth's claim agrees Kenya not-responsible as only forwarding agents.

Previous Paper

60
26409

MINUTES

~~Mr. Ehrhardt.~~ *Battersby W Battersby*

We have discussed this.

If the Attorney-General's opinion is correct as to there being an implied warranty under Section 114, it is of no use to argue further the question of there being or not being a latent defect under Section 116, which leaves the Attorney-General to be right, as looks at through the Flax Companies who bought in Africa from the local Government, who have a good case against the Government in the local Courts if they chose to bring an action.

As against these claimants it seems clear that the Kenya Government and not the Flax Control Board are liable. It appears from 26788 that the seed was good when it started and the deterioration must have been due either to (1) faulty packing, or (2) faulty storage either in the boat or in the Colony on landing. As to (1) the Crown Agents consulted the Flax Control Board who consulted Wigglesworths who in turn

Unsa del of June 2011
Wigglesworth 19 June 21
Copy also By 12 June 21

Subsequent Paper

Gov.
29259

referred

513
Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 26th May.

(Received Colonial Office 11.55 p.m. 28th May, 1921)

275 26th May your telegram 9th May. ¹⁰³³ _{31 12 21} ~~Addressed~~ Attorney General considers question of latent defect ~~in the~~ ^{one of} fact depending on question whether usual tests could have discovered defect. He doubts whether latent defect could be successfully pleaded as transaction appears to fall under section No. 114 which implies ~~in fact~~. Reference inquiry as to justification of ~~seed~~ germination tests were made by local Government ~~by~~ ^{owing to} variability seed low germination was not proved until May. ^{By} that time greater portion of consignment issued. It must be remembered that this was only ~~seed~~ available ~~and~~ consignment contained some good bags but facilities were not available to test each individual bag in so large a consignment moreover issue of seed could not be delayed as sowing season was on. This Government contends defect arose not from storage but from defective packing for transit through tropics and that flax control board responsible. Reference Figglesworth's claim I agree no responsibility on this Government as ~~we~~ were only forwarding agents.

NORTHEY.

1	2	3	4	5	6

C.O. 533

259

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TELEGRAM

28833

514

DA 63 Z NAIROBI 435/131

PP 26

CHAPLAIN LONDON

26 May 1945
275 MARSHIEST UNFRET FLAK SEED APOSE

CONSIDERS QUARRELOUS LATENT DEFECT AZURITE

^{one of}RICANET ^{depending on}FACT ^{could have}DENEGRAZE QUESTION WHETHER

USUAL TESTS ^{double check}CRISTATION DISCOVERED DEFECT

^{could be}SILVER COD ^{successfully}HE DOWNINESS LATENT DEFECT

^{could be}CRISTATI ^{successfully}SLIDERAIL PLEADED AS ^{rather}SYRINGPUN

TELEGRAM

RECEIVED AT THE TELEGRAPH OFFICE BY TELEGRAM
TELEGRAMS SHOULD BE ORDERED

100 10/10/19

2 101 2 515

appears to
ALNATHAN FALL ROYALRICH WELLBOAST WHICH

IMPLIES WARRANTY SILVERCOP REFERENCE INQUIRY

as to *justification of*
ANNULATING JOSTLINGS SELLING GERMINATION

made by *local Govt*
TESTS WERE MAGNETSAND GLIBROSE BUT

owing to
OXIDENLO VARIABILITY SEED LOW GERMINATION

nd proved
WAS PROSEKITE BUTLERSHIP TIME

private portion of document
PERESKIES CONNATE ISSUED SILVERCOP REFRENEAN

this was
SUDARY ONLY SEED AVAILABLE AND CONNATE

CONTAINED SOME GOOD BAGS BUT FACILITIES

THE EASTERN TELEGRAPH COMPANY, LIMITED.

DIRECT CABLE ROUTES FOR TELEGRAMS

TRAFALGAR NEW ZEALAND, SOUTH AMERICA, INDIA, CHINA, JAPAN, STRAITS SETTLEMENTS,
SPAIN, PORTUGAL, GREECE, TURKEY, EGYPT, ALL PARTS OF AFRICA, &c. &c.

LONDON STATIONS

PROVINCIAL STATIONS

HEAD OFFICE OF THE COMPANY, ELECTRA HOUSE, FINCHBURY PavEMENT, LONDON, E.C. 2.

EASTERN AVE, LONDON. Telephone 3240 LONDON WALL.

VIA EASTERN

PAID ADDRESSES ONLY PLEASE ADVISE BY POST

SIGNALLY AVE. LONDON. Telephone 3240 LONDON WALL.

TELEGRAM

FOR THE EASTERN TELEGRAPH COMPANY, STATION, ELECTRA HOUSE, FINCHBURY PavEMENT,
REPLIES SHOULD BE ORDERED

Via Eastern

4
Tab 517

no responsibility

RETINUES ORBITAL GOVERNMENT LAS TITULADA

ONLY FORWARDING AGENTS = NORTHBY

518

10

Sent 10.55 am

9/6/21

AWB

Jewishly

9 June

unfurnish

Your telegram of 26th May

whaleman ticpolonga
No. 275 Flaxseed. In view of

organicos appose

Attorney General's opinion that
opinion of Attorney General

substantiate

there was implied warranty under

royalrich wellboat computers adarcist
Section 114 I am advised that

saglectone

Growers who purchased in East

Africa from Kenya Government
granted

cantaloupe
have good case against Government

aguator
and there seems no alternative

hupaga subacid
but to make best terms possible

trackchar st
with them. I note from your

unfranked subpious
telegram of the 4th May that

hippologue cerdoten
you hope to be able to settle
major photology substant
claims for 18930. There can

DRAFT. TELEGRAM (CODE)

ERNOR

**NAIROBI.
MINUTE.**

Mr. Batterbee, 7.6.21.

Mr. Schardt 8.

Mr. Schomberg

Mr. Grindle.

Sir H. Lambert.

Sir H. Read.

Sir G. Fiddes.

Col. Amery.

Mr. Churchill.

(22053)

Drafts for exam.
his Draft is rather
long but I don't see
how to make it shorter.

Croatian
be of course no question of consequential

sd
damages. Flax Control Board disclaim

retiforme *alcoholate* *adavert* *inadidimus*
responsibility and I am advised that it

llomenes *transfer* *surgeful*
is impossible to shift liability on them

annotators *adoptivend*
as it is agreed that the seed was good

when shipped and deterioration took place
dicalice *must have taken place* *spurtouch*

oxidens
owing to either (One) faulty packing,

or (two) storage in ship, or *three* (third) storage

Choughs *sd*
in Colony on landing

annulativy *cuneal*
As to (One) Board consulted Crown Agents who

took best advice possible and as to (two)

cuneal *retendant*
Crown Agents were responsible for shipping.

canturite *alogista* *convical*
In any case therefore it appears clear

that Government *legally* *retendant* *sd*
legally responsible

recodemor
Deeply regret that Colony should

coalstone
be compelled to find this sum at present *monstrous* *the need of* *off colour* great

bullet *aginator*
financial stringency but I see no alternative.

It

touchpiece *makoupa* *almude*

It would be hopeless to make appeal

to Treasury with any prospect of

success.

annoyment

As regards Wigglesworths.

adorners

appose

I agree with the Attorney General

position different as they are direct

dingthrift

from Board and Government only

carrying agents. I am informing

them Board repudiate liability and

alchonso

terestaria

that I am unable to press Board

further.

Royllie

DRAFT.

Downing Street,
10 June, 1921.

30
Encl
Recd 29/6/21

SWORTH & CO. LTD.

~~FLAX DEPARTMENT~~

MINUTE.

- Mr. Batterbee. 7.6.21*
- Mr. Eberhardt 8.*
- Mr. Kollonby 8/16/21*
- Mr. Grindle.
- Sir H. Lambert.
- Sir H. Read.
- Sir G. Piddell.
- Col. Amery.
- Mr. Churchill.

8
[Handwritten signature/initials]

Copy 13/7 12 June 21
Copy for 40 4/12 June 21

Gentlemen,

I am etc. to acknowledge the receipt of your letter of the 27th May (25149/21), with regard to flax seed supplied to you by the Flax Control Board and in reply to state that we can only repeat that the Flax Control Board repudiate liability for the loss sustained by you in the matter, and that he is unable to press the claim on them further.

2. So far as concerns the part of the Kenya Government acting as carrying agents, I am

*further claim I am
able to stop as to the
basis. So far as Bylesworth's
is shown as inclination to
a claim against the firm
so we want to say anything
to suggest their being*

Suggest that it wd be better to omit para. 2.
HTS.
H. J. READ

to point out that the seed was packed in accordance with the ~~advice~~ ^(as recommended by you) given by the expert, viz. Major Leggett (now Sir Humphrey Leggett), and that special care was taken with regard to the stowage on board ship to see that the seed was stowed in a well ventilated hold.

I am, etc.,