

1921

KENYA

575

49916
8 OCT

FROM
CROWN AGENTS

DATE
7TH OCTOBER 1921

FOR CIRCULATION :-
Mr.
Mr.
Mr.
Mr. Frindle
Sir H. Lambart
Sir H. Read
Sir G. Fiddes
Mr. Wood
Mr. Churchill

SUBJECT
MAGADI RAILWAY LEASE

Encloses 12 copies of revised draft and enquires as to possible modifications of British control clause and as to insertion of clause as to payment by Coy of cost of preparation of the lease.

Previous Paper

30564

MINUTES

Mr. Buxton
Sir H. Read

To Magadi Co (copies of) memo 24 Oct 21
Copy above for 1928 22 Dec 21
907/61555/21

Draft with C.O. for comment
herewith
I enclose
(a) My comparative statement
(b) Mr. Buxton's copy of the more
important points of same -
prepared at his direction to be
sent to the

In the three copies of the revised
draft annexed for the C.O. at Harar
under the heading date 1.1.18
in cl. 25. It is to be noted
the C.O. suppose that we ever
contemplated such a
liability.

Subsequent Paper

52158

24/10/21 MB 21/10
21.10.21

Comparative Statement

1920	1921	
1	1	Permitting recital. One date still blank. Date of taking over inserted as 1.viii.15 (43929/20)
2	2	"Kenya" substituted for "East Africa Protectorate". Some consequent corrections still required.
3	3	No change.
4	4	Words defining position of Magadi Junction omitted as unnecessary. Commencement of Lease inserted as 1.viii.16. (summit 30/15)
5	5	Date of payment of rent to be stated (1st August).
6	6	Provision as to bankruptcy. This was queried by the lessees but it was decided to retain it (48137/20).
7	7	No change.
8	8	Out out as time expired, and provision as to land is open to objection (43929/20). Company may object.
9	9	No change
10	10	No change
11	11	The old clause 8 as relating to construction, disappears as time expired by agreement with the Company and the new clause 7 as to the Company bearing the cost of completing the Railway so as to carry 160,000 tons is put in at the Governor's request (43929/20)
12	12	Our Solicitors' objection to this is removed by the fact that the Company have already agreed (14564/20)
13	13	British Character of Company. No change. Lessees maintain that last two sentences go beyond the agreement. Decided to maintain it (48137/20).
14	14	No change
15	15	No change
16	16	Verbal alteration ("representative" for "Engineer or Superintendent" made at request of Government (43929/20)
17	17	Last sentence of old clause 13 struck out because old clause 5 is omitted - see above.
18	18	No change
19	19	Omitted at Company's suggestion and with Government's concurrence.
20	20	No change
21	21	No change
22	22	No change

- 16 Omitted as time expired and by agreement.
- 17 No change
- 18 No change. Government objected but do not now press objection.
- 19 No change. Local Governments original criticism withdrawn.
- Omitted as time-expired - by agreement.
- Omitted at request of Government Company not yet consulted.
- 20 Data inserted in line 2 (see Preamble).
Words "of the railway" to be inserted in line 6.
See separate note.
- 21 No change
- 22 No change. Inserted at request of Company and Government criticism not pressed.
- 23 No change.
- 24 No change
- 25 No change except for insertion of date 1.1.18. See separate note.
- 26 Words as to inclusion of past expenditure or improvements to main line inserted - as in case of rolling stock (old 26). Company not yet consulted but no reason to expect trouble.
- 27 No change. Government's criticism not pressed.
- 28 Rate per cent raised from 4 to 6 in deference to Government's wishes. If Company object we fall back on our proposal of 4 per cent for the first 6 months and 6 per cent thereafter.
- 29 Provision of § 45 of contract embodied instead of referred to.
/// 245 substituted for 230. See separate note.
- 30 }
31 }
32 }
33 }
34 } No change.
35 }
36 }
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38 }
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41 }
42 }
43 - Inserted by Company and now struck out. See separate note.
44 }
45 } No change.
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Notes on the draft of the Road Railway Lease
(discussed by Mr. Bottomley and Mr. Bushe 18.12.21)

Draft of
A.Y. 21

(line 9)- The date of commencement of the lease shall be the 1st of August, 1915 (viz. the date on which the railway was taken over.)

11) (line 11)- The date for payment of rent shall be the 1st of August each year.

18
(6) (lines 18
-26)-

Provision in case of insolvency.
The Crown Agents, in reporting the company's objection to this provision, say that their solicitors support its inclusion, the only serious argument advanced to them by the Company being that the Lease is not a real lease, in the opinion of the company, makes them practically proprietors of the railway for the period of the lease.

If the point is raised again, we should say that the words in question ('^{or in case the} herein contained'.....'construction only') are common forms that it is not possible to object to the Government's proposal to appoint a commission to run the railway for a limited period.

Clause 5 of the draft is founded on Clause 1 of the Contract.

Draft of

B.III.20 3.X.21

mitted from the new draft lease at the request of the Colonial Government.

We should point out that provision for the construction period is no longer necessary, and in regard to the last words of the Clause, that the land would be within the Masai Reserve it would not be within the power of the Government of its own motion to put land at the disposal of the Company.

If the Company maintain their objection as to any alterations in the Memorandum on the articles of association being notified to the Crown Agents, we can agree to the omission of that part of the Clause; but the provision should be inserted on other grounds (British Company and 1/5th British Directors) should be intended.

To the remark on the comparative statement it should be noted that under Clause 25 of the contract all necessity for the sentence now omitted ceased at the end of 5 years from the completion of the railway.

The reference to the provision of rolling stock is omitted because provision has already been made in excess of the cost mentioned.

From line 3 down to '..... of these

25- (lines 6 and 7)

20 (lines 6 and 7)

Draft of

20 3.X.21

presented in the new draft should read: 'all necessary rolling stock for the efficient working of the railway'.

This alteration should be made in the copy sent to the Company.

25 The date 1st of January, 1918, has been inserted by mistake. It should be struck out when we write to the Company, who should be informed that our information is that their operations began in September, 1916, from which date it appears that the 1st period of 5 years should be reckoned.

When they object, they can be asked to show anything in the Contract ^{relating} ~~concerning~~ them in the event of war disturbance, and, as they cannot do so, adjustment of this date may be used to bargain on other points.

Latest date is 1st of January 1917, i.e. 1st January 1922 would be inserted in ~~Contract~~.

34 29

When the currency was altered, the Local Government wished to increase all amounts expressed in Sterling by 50%. In the case of railway rates this was held to be impossible; but the case of the amount to be satisfied for maintaining the railway is different. £30 a mile was originally provided, i.e. Rupees 450/-

and

And it ^{might be} ~~must~~ be remembered that 450 Florins will not be too much to allow under the new conditions. The local Government have complicated matters by recommending that this amount should be expressed ~~in~~ Sterling, like the other sums mentioned in the Lease, but the fact remains that £45 will now only produce the same amount of local currency as £30 did in 1911.

Our case is not a strong one and we shall be better advised to argue the point on the ground that cost of maintenance has greatly increased.

Clause 46 in the old draft Lease was inserted by the Company and resisted by the Crown Agents solicitors. As the instigation of the Government it has been strick out.

^{was intended that} Obviously it was intended to apply to the construction period, and it is for the Company to show what covenant on their part would now be affected by it.

K/Sec.Kenya 31a.

Mr. Bottonley,
Colonial Office

In reply to your note of the 11th October,
re the Mbagati Railway lease, the Solicitors inform
us that the date "1st January 1918" in Clause 25A of
the latest print is a mistake in drafting which they
regret .

W. H. H. H.
Crown Agents.

14. 10. 21.

3.10.21

Attorney in Charge

G. E. Magadi Company

581

KENYA COLONY AND PROTECTORATE.

Lease

ON

RAILWAY TO LAKE MAGADI.

DATED

192

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

KENYA COLONY AND PROTECTORATE.

This Indenture made the _____ day of _____ 19____

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for or 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 (Consolidation) Act 1908 and having its 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 its successors and permitted assigns) of the other part.

Whereas by an Indenture dated the 12th day of April 1911 and made between the then Crown Agents of the one part and the Lessees of the other part (hereinafter referred to as "the Lease of 1911") certain lands and premises together with certain rights were granted and demised to the Lessees for the purpose of working certain mineral deposits at Lake Magadi and elsewhere in the Kenya Colony and Protectorate.

And whereas by an Indenture dated the 13th day of April 1911 and made between the same parties as were parties to the lease of 1911 the Lessees covenanted and agreed to construct upon the terms and in the manner therein mentioned a railway from the main line of the Uganda Railway to or near Lake Magadi with liberty to construct certain port works at or near Kilindini and certain sidings connecting the same with the main line of the Uganda Railway at or near Mombasa and the said Indenture is hereinafter referred to as "the Construction Contract."

And whereas by Clause 15 of the Construction Contract it was provided that subject to the provisions of the Construction Contract and subject as to accommodation works to the right of use and enjoyment thereof by the persons for whose benefit the same should be constructed the Crown Agents would on the completion of the railway grant to the Lessees such lease as therein mentioned of

the railway and of certain other lands provided by the Government for the purposes of the Construction Contract.

And whereas the Lessees have completed the railway which has been opened and used for traffic since the month of 1915 and the working and control of the said Railway was on the 1st day of August 1915 taken over and transferred to the Uganda Railway Company.

And whereas the Lessees have requested the Crown Agents to grant the said lease 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.

Interpretation

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

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

- 3/11/15*
at all times to be the same
- (A) "The Protectorate" means the Kenya Colony and Protectorate.
 - (B) "The Government" means the Government for the time being of the Protectorate.
 - (C) "The Governor" means the Governor for the time being of the Protectorate 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 Pier" means the pier depot works and conveniences and all the siding which the Lessees are by Clause 1 of the construction contract empowered to make at or near Kisumu and any works substituted for the same as in the construction contract provided.
 - (G) "The Lessees' Engineer" means the person appointed by the Lessees to carry on their behalf the works under the construction contract in the Protectorate.
 - (H) "The General Manager" means the General Manager for the time being of the Uganda Railway.
 - (I) "Month" means calendar month.

General Manager
may delegate powers

2. The General Manager may from time to time delegate to assistants to be named by him such of the powers rights authorities and discretions vested in him hereunder as he may think fit and the Lessees shall recognise such assistants on written notice of their appointment and of the powers rights authorities and discretions respectively delegated to them as lawfully exercising for the purpose of these presents the powers and authorities so delegated.

Uganda Railway
Company

3. The Crown Agents hereby grant and demise to the Lessees All that Railway constructed by the Lessees wholly in the Protectorate 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 To hold unto the Lessees as from the 1st day of August 1911 during such term as the Lease of 1911 shall be subsisting and effective at the yearly rent of five shillings payable on the *first* day of *August* in every year. Provided always and it is hereby declared that if and whenever the said rent shall be in arrear for the space of 60 days next after the day when 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 nonobservance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained [or in case the Lessees or any of them being a person or persons shall become bankrupt or insolvent or compound with or make any assignment for the benefit of his or their creditors or if a Receiver of the Lessees undertaking or any part thereof shall be appointed by any Court of competent jurisdiction or in case the Lessees being a Company an order shall be made or an effective resolution passed for winding up the Company (except with the consent in writing of the Government for the purpose of reconstruction only) 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 into or upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in their former estate and thereupon this lease and the liberties hereby granted shall cease and determine but without prejudice to any right of action which may have accrued to the Crown Agents or the Government in respect of any breach 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 on and such relief against forfeiture as shall for the time being be applicable under the laws of England to a proviso for re-entry contained in a lease of land in England.

Covenant for quiet enjoyment

4. The Crown Agents hereby covenant with the Lessees that 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.

Minerals and precious stones in or under lands acquired by Lessees reserved to Government

5. Nothing herein contained and no grant or provision of lands by the Government under the construction contract shall be deemed to confer upon the Lessees any right to any minerals or precious stones in or under or near the premises hereby demised or such lands as aforesaid but the Lessees shall be entitled to a right of support both vertical and lateral therefrom. Such minerals and precious stones shall be reserved to the Government who shall have the free right and liberty by themselves their servants or licensees to enter upon the premises hereby demised or the said lands for the purpose of searching for digging and carrying away such minerals and precious stones so far as can be done without interfering with the working of the Railway or causing any subsidence of the Railway or of any buildings works or premises connected therewith and the Government shall make good all damage done by any such entry searching digging and carrying away as aforesaid.

Superfluous lands

6. The Lessees shall from time to time with the sanction of the Uganda Railway Administration as soon as practicable relinquish to the Government such of the land included in this demise as shall for the time being have become unnecessary to be retained by the Lessees for any of the purposes of the construction contract or of the Railway whether immediate or prospective and whenever in the opinion of the Uganda Railway Administration it shall appear to be unnecessary that the Lessees shall retain possession of any particular land included in this demise the Uganda Railway Administration shall certify such their opinion to the Lessees and upon receipt of such certificate or so soon thereafter as may be the Lessees shall state in writing to the Government whether they acquiesce in the opinion of the Uganda Railway Administration or whether they object thereto and if so the grounds of their objection. If any objection is stated by the Lessees and the grounds of their objection are not in the opinion of the Government sufficient the same shall be submitted to arbitration

provided that no land is to be deemed unnecessary to be retained by the Lessees as aforesaid if it is likely to be required in the future for further developments of the railway.

Costs of completing Railway to be borne by Lessees

7. The whole of the cost of completing the Railway so as to be efficient to carry at least 100,000 tons of the Lessees' products in any one year and all the costs of construction and equipment and of all labour and materials for the same shall be borne and paid by the Lessees.

Lessees to be British subjects or a British Company

8. The Lessees and any Company or Corporation becoming by assignment or otherwise entitled to the benefit hereof and to the term hereby granted or any part thereof or to possession of the premises hereby demised or any part thereof shall be and remain British in constitution and character registered in Great Britain or a British Colony and having its principal place of business within His Majesty's Dominions and the Chairman of the Lessees or of any such Company or Corporation as aforesaid and at least four-fifths in number of the Directors shall at all times be and remain British subjects. In the event of any alterations being proposed to be made in the Memorandum or Articles of Association or constitution of any such Company previous notice thereof in writing shall be given by the Lessees to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principles that the Company shall be and remain a British Company under British control may refuse their consent to such alteration. If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Company shall at any time cease to be a British Company or if at least four-fifths in number of the Directors shall not be British subjects the Crown Agents may thereupon cancel and determine the demise hereby granted without making any compensation to the Lessees.

As to interference with public or private rights

9. 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 Protectorate and in addition thereto the Lessees in anything which may be done by the Lessees hereunder 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 and 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 by reason of the default of the Lessees make any payment in respect of such damages claims or losses the Government may recover such amount from the Lessees but this clause shall not extend to any accidents damages claims or losses 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 have arisen from some neglect or default of the Lessees

Minerals relics etc. found on site of Railway to be the property of the Government

10. All gold silver and other minerals of any description and all precious stones coins treasure relics antiquities and other similar things which shall be found in or upon the site of the Railway in the Protectorate shall be the property of the Government except that the same are not found within the area included in the Lease of 1911.

Contractors provide office

11. 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 if thought fit and a responsible representative to whom notices may from time to time be given and after every inspection of the Railway complaints or requisitions (if any) shall be addressed to the said representative and if the complaints or requisitions cannot thereupon be remedied or complied with the General Manager shall communicate his complaints or requisitions to the Lessees' Engineer for the purpose of determining how the said complaints or requisitions may be best remedied or complied with.

As to complaints by Engineer

Plant and material to be imported duty free

12. No import duties shall be payable or levied upon or in respect of any machinery plant materials or rolling stock imported into the Protectorate for the purpose of the initial equipment of the Railway. The rate for the carriage other than the cost of loading and unloading (except at intermediate places) such services except as aforesaid shall be performed by and at the costs of the Lessees over the Uganda Railway of such machinery plant materials or rolling stock as aforesaid and of fuel for the equipment of the Railway shall be from Kilindini to the junction of the Railway with the main line of the Uganda Railway one penny per ton per mile.

Power to Government to erect telegraphs and telephones

13. The Government may at any time or times cause a line or lines of electric telegraph or telephones to be constructed along the line of the Railway for the use of the Government and for that

purpose or for the purpose of repairing altering maintaining or extending the said telegraph or telephone the Government may enter upon and occupy so much of the lands hereby demised as may be necessary for the said purposes without making any compensation therefor but making good all damage done and so constructing and using the said telegraphs and telephones as not to interfere either in the construction or use thereof with the efficient working of the Railway and such telegraphs and telephones may be used by the Government or their nominees for the purpose of transmitting messages by any system or invention now or at any time hereafter in use. The Lessees may make and use for the purposes of the Lessees' own business in connection with these presents or with the Lease of 1911 such lines telegraphs and telephones along the line of the Railway as they think fit and similarly work the same by any system or invention now or at any time hereafter in use.

No arms or ammunition to be sold to natives

14. 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 natives or native or permit or suffer any of the Lessees' employees to make any such sale gift barter or other disposition.

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

15. The Lessees shall not at any time during the term hereby granted sell give or barter any spirituous liquors to any natives or native or permit or suffer any such sale gift or barter to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquors into the Protectorate or any part thereof otherwise than for the use of the European agents or employees of the Lessees and upon and subject to such rules as may from time to time be made by the Governor.

As to liability of Lessees to special sanitary structures

16. If the Government shall 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.

Native labour

17. The Lessees shall at all times comply with such requirements and make such arrangements as may be given or directed by the Government to secure the suitable treatment of native labourers or workmen.

Option to Lessee to acquire land within a quarter of a mile of Railway

18. The Government shall not at any time during the term hereby granted sell lease or otherwise dispose of any land within a quarter of a mile on either side of the Railway to any person persons or corporation other than the Lessees without first giving the Lessees the option of acquiring from the Government any such land on the same or similar terms and conditions as those on which the Government may be willing to dispose of the same to any other person or persons or corporation.

Capital outlay

19. An account of all moneys properly chargeable to capital expended by the Lessees for the purpose of the construction of the Railway and the Port in accordance with the Construction Contract shall be kept and from time to time submitted to the Government for the purpose of being vouched and the Government shall have the right to audit the same if they so desire within six months of the same being submitted and in the event of the said account not being agreed the amount thereof shall be settled by arbitration and the amount shown on such account when so agreed or settled as aforesaid shall be treated as capital outlay for the purpose of these presents or of the Construction Contract. If any alterations additions or improvements shall hereafter be made in or to the Railway and/or the Port or any money be paid or provided by the Lessees under Clause 27 hereof a similar account shall be kept in respect thereof and the same shall be subject to a similar audit agreement or settlement and the cost incurred in executing such alterations additions and improvements and any money so paid or provided by the Lessees under Clause 27 hereof shall be added to the capital outlay aforesaid, and the total shall be treated as the total capital outlay for the purpose of these presents and the Construction Contract the principle upon which such accounts are to be made up being that capital is to bear the cost of the new works and of substantial alterations additions and improvements to old works and that the cost of repairs restorations renewals or replacements is to be borne by revenue.

Uganda Railway Administration to work Railway and provide rolling stock

20. The Uganda Railway Administration shall as from the 1st day of August 1915 being the date upon which the railway was taken over by it until the expiration or sooner determination of the term hereby granted (subject to the provisions of Clause 27 hereof) work and maintain in working order the railway and shall maintain all necessary rolling stock for the efficient working at the estimated maximum cost of £200,500 (in which maximum cost shall be included the cost of rolling stock provided for the work of the railway before the date of these presents) on the terms and subject to

the provisions hereinafter contained. Provided nevertheless that 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 provide such special tank cars (if any) as the Lessees may require for the carriage of the Lessees' liquid fuel but shall not be entitled to any rebate or allowance off the rate or respective rates for conveyance mentioned in Clause 25 hereof by reason of the provision of any cars provided by the Lessees.

21. The Government shall have the right at any time or times for urgent state purposes of its need for which the Government shall be the sole judge to take temporary possession of the whole or any part of the Railway and the Port or either of them or any of the rolling stock telegraphs telephones buildings and other things of every description and to use the same for their own purposes upon paying reasonable compensation but without any consent on the part of the Lessees and the Government shall also at any time or times be entitled to have any of their military marine and police forces and their arms horses guns ammunition baggage and stores and also all mails mail bags and post office requisites and things conveyed over the Railways or to the Port in priority to any other traffic and if in cases of urgency the Government so require with all the resources of the Railway.

22. All the business connected with the management and maintenance of the Railway and conducting the traffic thereon shall in all respects so far as practicable be carried on in the same manner and subject to the same regulations and control as the Uganda Railway and the Lessees shall not interfere with such business but the Uganda Railway Administration shall use their best endeavours to provide that the traffic of the Lessees is not (subject to the provisions of the last preceding clause hereof) prejudicially delayed by any other traffic.

23. The Government and the Uganda Railway Administration shall (subject to the provisions of Clause 22 hereof) have power from time to time to do any of the following acts or things namely to:—

- (A) Allow the use of any of the stations belonging to the Railway for the accommodation of the traffic of any other railway upon the payment of reasonable tolls and under reasonable conditions and restrictions and also upon reasonable terms to make such alterations and additions as may in the opinion of the Uganda Railway Administration be necessary or

Government of Uganda
Railways

Railway to be
carried on in same
manner as Uganda
Railway

Power of Uganda
Railway
Administration

convenient for the purposes of such accommodation but no such alterations or additions shall involve the Lessees in any liability to pay or be charged with any capital expenditure.

- (b) Allow the use of the Railway or any part or parts thereof for the passage of engines and trains from or to other railways of the same gauge upon the payment of reasonable tolls and under reasonable conditions and restrictions.
- (c) Make reasonable arrangements for the interchange of traffic and for through working between the Railway or any part thereof and other railways.

Rates and fares

24. Except as herein specially provided with respect to the Lessees' traffic the rates and fares for the carriage of goods and passengers on the Railway or any portion thereof shall be such as may from time to time be determined by the Uganda Railway Administration at their absolute discretion with the approval of the Government and the classification of goods thereon shall be in conformity with that from time to time in force on the Uganda Railway except that the fares and rates per mile on the Railway shall be at least equal to those on the Uganda Railway.

25. The following provisions shall have effect with respect to the Lessees' traffic over the whole line of railway between the Lessees' works as hereinafter defined and the Lessees' port as aforesaid over the Railway from the Lessees' works for the time being carried on by the Lessees in connection with their operations under the said Lease (hereinafter called the Lessees' Works) to the point where the Railway joins the Uganda Railway and thence to the Uganda Railway to the Lessees' port:

- (A) Until the expiration of the period of three years from the date of the commencement of the said Lease the rates for conveyance of coal from the Lessees' works and of raw soda soda products or manufactured soda from Lessees' works to the Lessees' port shall be halfpenny per ton per mile.
- (B) For a further period of three years from the expiration of the said period of three years the rates for conveyance of the same merchandise as aforesaid shall be increased to nine sixteenths of a penny per ton per mile.
- (C) On the expiration of such period of three years and each subsequent period of five years during the term of the said Lease the said rates for conveyance of the same merchandise as aforesaid shall be subject to revision.

- (D) If it has been found during the said period of three years or any such period of five years as the case may be then last expired that the cost of working the Lessees' said coal and soda traffic exceeds the receipts derived from the same or if the said receipts exceed the said cost by less than one sixteenth of a penny per ton per mile then the existing rates shall be increased to such extent as may be necessary to allow the railway a profit over the cost of working the traffic of one-sixteenth of a penny per ton per mile, but so that the said rates when so increased respectively shall in no case exceed one penny per ton per mile. Provided that such maximum of one penny shall only apply for a period of 21 years from the day of
- (E) If on the other hand it has been found that during the said period of three years or the period of five years as the case may be then last expired the receipts derived from the Lessees' coal and soda traffic exceeds the cost of working the same by more than one-sixteenth of a penny per ton per mile the rate shall be lowered to such an extent that the profit of the railway over the cost of working the traffic shall not exceed one-sixteenth of a penny per ton per mile but in no case shall the said rates for conveyance or any of them respectively when so decreased be less than nine-sixteenths of a penny per ton per mile.
- (F) The service of loading and unloading the Lessees' coal and raw soda products and manufactured soda at the Lessees' port and at Kiliindini and at the Lessees' works shall in all cases be performed by and at the sole expense of the Lessees, but the service of loading or unloading (if any) at intermediate points on consignments booked through between the Lessees' port and the Lessees' works shall in all cases be performed by and at the sole cost of the Uganda Railway Administration.
- (G) For the purpose of ascertaining the cost of working referred to in the preceding paragraphs working expenses shall mean and include only such payments as in like concerns are usually chargeable to revenue and if any question shall arise as to what constitutes working expenses such question shall be determined on the general principle that capital is to bear the cost of new works and of additional rolling stock plant and machinery and of substantial improvements of and additions to old works rolling stock and machinery including the cost of temporary new work the construction

of which is requisite for the construction of a work chargeable to capital and that only the cost of repairs, restorations, renewals, replacements, and substitutions other than such as may be due to defective construction is to be borne by revenue.

- (ii) The account of working expenses for each of the specified periods shall after being audited by the person or persons for the time being appointed for that purpose by the Government (hereinafter called "the Government Auditors") be submitted to the Lessees who shall be at liberty to have the accounts subsequently audited by some person or persons (hereinafter called "the Lessees' Auditors") from time to time appointed by the Lessees for that purpose and approved by the Government (such approval not to be unreasonably withheld) and the Government shall afford all reasonable facilities for every such audit by the Lessees' Auditors. If the Lessees' Auditors shall make any objection to any account audited by the Government Auditors the matter in difference shall be referred to and finally settled by some person or persons appointed for the purpose by His Majesty's Secretary of State for the Colonies for the time being.
- (j) The Lessees shall not be entitled to claim the rates as fixed by this clause for the carriage of such soda products or manufactured soda the market value of which would for the time being *c.i.f.* Thames be 75 per cent. higher than the market value *c.i.f.* Thames of soda ash.
- (k) No Customs, Excise or import duties shall be payable or levied upon or in respect of any coal imported into the Protectorate for the purpose of the railway and/or the Lessees' works and/or the Lessees' port provided that the Lessees shall not so long and so long only as the importation of such coal would but for the provisions of this sub-clause render the same liable for duty sell give away or dispose of the same otherwise than for the purposes aforesaid.

26. The following additional provisions shall apply in relation to the conveyance of the Lessees' traffic :-

- (A) The Uganda Railway Administration will unless prevented by circumstances beyond their control undertake to carry such raw soda, soda, soda products and manufactured soda as may be consigned by the Lessees up to a total amount of 160,000 tons in any one year provided that they shall be

under no obligation to carry during any one month more than 12 per cent. of the total quantity they are liable to carry during that year and the Uganda Railway Administration shall make such improvements to its Main Line (at an estimated maximum cost of £146,500 in which maximum cost shall be included the cost of improvements to its main line made by the Uganda Railway Administration before the date of these presents for carrying the Lessees' raw soda, soda, soda products and manufactured soda) as may in the opinion of the Governor be necessary for carrying the quantity of 160,000 tons in any one year as aforesaid.

- (B) The raw soda, soda, soda products and manufactured soda shall be carried in the trucks of the Uganda Railway Administration properly protected from the weather and from dirt and the Lessees shall in the case of detention of trucks by the Lessees pay such an additional sum for demurrage as the Uganda Railway Administration may reasonably fix but in no case exceeding the published rates for the time being.

27. The Lessees shall during such time as the Railway shall remain vested in the Lessees and be worked by the Uganda Railway Administration be liable to provide funds for making good all damage to the Railway which shall be due to extraordinary casualty affecting the same and of such a nature that in accordance with the provisions of Clause 19 the cost of making good such damage would be a charge against capital and the Lessees shall on demand pay to the Uganda Railway Administration the amount expended by them in making good such damage but no such work is to be undertaken without the consent of the Lessees. Provided that if in any such case the Uganda Railway Administration and the Lessees shall not agree as to the liability of the Lessees or the amount to be expended under this part of this clause the Government will cause the matter in question to be referred to arbitration under the provision for arbitration hereinafter contained and so far as it shall be decided on such arbitration that any charge should be excluded from working expenses it shall be borne by the Lessees and be charged to the capital account of the railway and so far as it shall be decided on such arbitration that any charge should be included in working expenses it shall be borne by the Uganda Railway Administration and be charged to the revenue account of the railway and such decision shall be binding on all parties.

Interest on sums
due to Uganda
Railway
Administration or
to Government

28. Any sum due to the Uganda Railway Administration or to the Government under any of the preceding clauses shall bear interest at the rate of 6 per cent. per annum from the date of demand.

Yearly accounts to
be furnished by the
Uganda Railway
Administration

29. After the Railway shall have been opened for traffic so long as the same shall remain vested in the Lessees and unless and until the Government shall exercise the power of purchase hereinafter reserved the Uganda Railway Administration shall within 150 days after the expiration of every year ending on the 31st day of December furnish to the Lessees accounts showing the gross receipts and the charge for working the Railway during such year and one half of the net profits of the Railway as shown by such accounts shall be paid to the Lessees. The net profits of the Railway shall be ascertained by deducting the working expenses of the Railway from the gross receipts thereof. The gross receipts from the traffic interchanged between the Uganda Railway and the Railway shall for the purposes of the contract be apportioned between and credited accordingly to the Railway and the Uganda Railway in proportion to the mileage over which such traffic shall have passed. The working expenses of the Railway shall for the purposes of this Lease be deemed to be the actual expenditure incurred on maintenance of Way Works and Stations (Abstract A of the Audited Accounts of the Uganda Railway) including the provision of a sum not exceeding £45 per mile per annum for the maintenance and renewal of the permanent way and an amount per mile of line equal to the average cost per mile of maintaining and working the Uganda Railway under the sub-heads of Abstract A for which no direct charge is made and an amount per train mile equal to the average cost per train mile of working the Uganda Railway under Abstracts B C D E F G being Locomotive Carriage and Wagon Traffic General Charges and Special and Miscellaneous Expenses respectively. The said audited accounts of the Uganda Railway shall be conclusive evidence of the amounts to be charged to the working expenses of the Railway. Provided that this clause shall not apply to any part of the said Railway which shall necessarily require to be worked by special methods.

Half net profits to
be paid to Lessees

Penalty of the
Government on
breach of
covenant in lease
or conspiracy of
Lessees or on
dissolution of
lease

30. If the Lessees shall fail for six months after demand to pay any sum due to the Government or to the Uganda Railway Administration or commit any other breach of any of the provisions of these presents and shall not remedy such breach within a reasonable time after being required by the Government so to do or if the Lease of 1911 shall be determined otherwise than by effluxion of time or if a Receiver of the Lessees' undertaking or any part thereof shall be appointed by any Court of competent jurisdiction or if an

order shall be made or an effective resolution passed for winding up the Lessees or any company to which the term hereby granted may have been assigned under the provisions in that behalf hereinafter contained except with the previous consent in writing of the Government for the purpose of reconstruction only then and in any such case in addition and without prejudice to any other rights given to the Government by these presents and notwithstanding any previous waiver of the rights of the Government or any previous exercise by them of any of such rights the Government shall have the right to purchase all the assets of the Lessees under these presents on giving one month's notice at any time after the happening of such event on the same terms as in the next succeeding clause mentioned.

31. The Government shall be at liberty to purchase the Railway from the Lessees at any time after giving one year's notice of their intention so to do and in such case the purchase price shall be a sum equal to the capital outlay as defined by Clause 19.

32. In the event of the Government purchasing the Railway any sum for the time being outstanding on account of any loans debentures or debenture stock and the interest thereon shall as from the date when the Government take possession cease to be a charge upon the Railway and shall thenceforth be a charge on the sum payable by the Government to the Lessees and every certificate of debenture stock and every debenture purporting to create or be secured by a charge upon the Railway shall bear an endorsement to this effect and as to the Government power of purchase hereunder.

33. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents may be given by writing signed by the Governor or by one of the Crown Agents or any person authorised on their behalf.

34. The Lessees shall not assign lease or otherwise dispose of the benefit of these presents or the railway or any part thereof without the previous consent in writing of the Crown Agents which shall not be unreasonably withheld: Provided always that the assignee shall execute such deed or document deeds or documents as in the opinion of the Government or the Crown Agents may be necessary to render the assignee liable to the obligations on the part of the Lessee contained in these presents.

35. No member or officer of the Government shall be in anywise bound personally for the acts and obligations of the Government under these presents.

Power of Government to purchase Railway

Provision as to debentures

Endorsement in debenture stock and debentures

Notices by Crown Agents

Lease not to be assigned without consent of Crown Agents

Members or officers of Government not to be personally liable

Certificates of the
Governor.

36. 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 have to be
given to Lessees.

37. All notices to be given to the Lessees 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 of the General Manager and shall in accordance with the requirements of the circumstances either be delivered to and left for the Lessees at their office (if any) or at the address above mentioned or other the registered address of the Lessees for the time being in England or at their principal or last known place of business in the Protectorate.

Provision for
arbitration.

38. 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 respectively 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 three arbitrators one to be appointed by each party to the reference, and the third by the two arbitrators to be so appointed or (if such two arbitrators fail for one month after their appointment to appoint such third arbitrator) by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrator or of any two of such 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.

Arbitrators may
make partial awards

39. 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.

May proceed
ex parte

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

May inspect books
and accounts and
examine on oath

41. The arbitrators and umpire shall have full power to inspect the books documents and accounts of both parties and 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

42. 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.

Marginal notes

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

In Witness etc.



49916

600

4, MILLBANK, 8 OCT 21
WESTMINSTER.

LONDON. S.W. 1.

7th October 1921

Sir,

With reference to your letter ^{Am} No. 30569/21 of the 2nd September, I have the honour to state that the draft lease of the Magadi Railway has been revised on the lines indicated in the papers which you enclosed and 12 copies of the revised draft are forwarded herewith as desired.

2. As regards clause 8 of the lease, we would call attention to the new form of British control clause which accompanied your letter of the 26th March last, No. 11389/1921 in connexion with the proposed bauxite concession to Mr. Murray Morrison in British Guiana, and in case any modifications can be made in the present case in the light of that clause.

3. The draft lease does not at present contain any clause relating to the payment by the Company of the cost of the preparation &c of the lease. We presume that such a clause should be inserted.

I have the honour to be,

Sir,

Your obedient Servant,

W. D. Dalton
for Crown Agents.

Under Secretary of State,
Colonial Office.

12

CA
49916/24 Kenya

601

Draft

24

Quid 533 9/4

24

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DRAFT.

Secretary & Managers
Magadi Soda Company Limited.

DOWNING STREET,

24 October, 1921.

MINUTE.

Mr. Bottomley. 21. 10. '21. Sir, *Bottomley*

Mr. Burke 22/10

Mr.

Mr. Grindle.

Sir H. Lambert.

+ Sir H. Read. *24*
to Mr. Bottomley
Mr. Prater

Mr. Wood.

Mr. Churchill.

for comm

I am etc., to inform you that he has had under consideration with the Governor of Kenya the draft of a Lease of the Magadi Railway which was discussed between the solicitors of the Company and the solicitors to the Crown Agents for the Colonies in the early part of last year.

2. The matter has required protracted consideration but Mr. Churchill is now in a position to communicate to you the accompanying ^{the copy of} revised draft which he suggests should be the basis of discussion between representatives of the Company and representatives of the Colonial Office at an early date. If the Company agree to this course I am to request that you will propose a day when it will be

convenient

22 Dec 21
Cm 499 1458

Bottomley
(the 30th (initials))

convenient for representatives of the Company to attend together with a statement of the names of the gentlemen who will represent the Company.

3. Mr. Churchill recognizes that there are several points which will need to be cleared up and it will be convenient if before the day of discussion he could be supplied with a note showing the various points on which the Company will wish to make recommendations.

4. I am to take this opportunity to acknowledge the receipt of your letter of the 19th of October regarding the Company's application for payment in

that will discuss a financial consideration of the effect of the rate of the Railway has been omitted from the Draft lease.

(52158)

respect of the fluctuation of exchange prior to the 23rd of April, 1919. It had been suggested to the Governor that, although no ~~legal~~ claim on the part of the Company could be admitted, the question might be considered in connection with the possible revision of the freight rates to be laid ~~down~~ in the lease of the Railway. The Governor has however expressed the opinion that the two questions should be dealt with separately and it is understood that the Company's representative who was recently in East Africa shared that view. In these circumstances Mr. Churchill regrets that he cannot consider any claim in respect of exchange of freight charges prior to the date on which the Company ~~brings the matter to notice~~ ^{brings the matter to notice}.

I am, etc.,

H. J. B. S.