MEMORANDUM BY THE SECRETARY OF STATE FOR THE COLONIES.

I CIRCULATE a copy of a Memorandum with regard to Rhodesia which was prepared last month with a view to submission to the Cabinet, together with copies of subsequent correspondence with the Treasury on the subject.

In view of the fact that the Treasury have agreed to my entering into negotiations with the British South Africa Company, I propose to take steps accordingly forthwith, but I think it desirable that my colleagues should be informed of the position.

(Signed) DEVONSHIRE.

Colonial Office,
April 19, 1923.
SECRET.

C.P. 148.

CABINET.

RHODESIA.

MEMORANDUM BY THE SECRETARY OF STATE FOR THE COLONIES.

THE position in regard to Rhodesia has reached a stage at which it is necessary to bring certain matters before the Cabinet. There are various problems concerning both Southern and Northern Rhodesia which require an early decision, and, though they are to some extent connected, it will be convenient to explain the position with regard to each territory separately.

A.—Southern Rhodesia.

A referendum which was held last October on the question whether the territory favoured entry into the Union or the grant of Responsible Government on the terms embodied in the Letters Patent which had previously been prepared, resulted in a vote in favour of the latter alternative, and it was announced in the House of Commons a few days ago that His Majesty's Government propose to give effect to the result of the referendum by granting Responsible Government at the earliest practicable date. The Elected Members of the Legislative Council in Southern Rhodesia are pressing that this should take place within the next few months, but difficulty has been found in fixing the date owing to the opposition of the British South Africa Company to the principles on which the draft Letters Patent are based as regards the reimbursement of their past administrative deficits.

The position on this point is briefly this: As a result of the reference which was made to the Judicial Committee of the Privy Council a few years ago as to the ownership of the unalienated lands in Southern Rhodesia, it was decided that the lands belong to the Crown, and that as a consequence the Company, who were regarded as having acted as agents for the Crown, would be entitled on the termination of their administration to the reimbursement of their administrative deficits either out of the proceeds of further sales of lands, or, if the Crown should grant away the lands or proceeds to others, from public funds. A Commission appointed in 1919, of which Lord Cave was Chairman, determined the amount of the deficits at the 31st March, 1918 at about £4,435,000, subject to an undetermined deduction in respect of certain lands estimated by the Company at £384,000. This Commission also decided that interest which the Company claimed was not payable. The amount of the deficits as on the 31st March, 1922 (neglecting the deduction in respect of the lands), is £3,780,000; in addition, the Company is entitled under the Charter to compensation in respect of public works and buildings used for administrative purposes which may be taken over for public purposes by the new administration. The present value of the administrative works and buildings is about £800,000.

The arrangement provided for in the draft Letters Patent is that the unalienated lands should be controlled by a Crown Land Agent, and that the proceeds of land sales and other land revenues shall be paid to the British South Africa Company until the debt due to the Company is extinguished. This, we are advised, is in accordance with the judgment of the Privy Council, and, though it is obviously fraught with grave administrative difficulties, it was felt when the Letters Patent were prepared that it was the only course possible if His Majesty's Government were to avoid having to pay in cash the sum due to the Company.

The arrangement is, however, objected to by the Company as inconsistent with their rights, and they have presented a Petition of Right claiming that they are
entitled to payment in cash, on the termination of their administration, of the total administrative deficits at that date with interest year by year from the 31st March, 1918. There are also alternative claims, one of which is that, failing repayment in cash, the authority appointed to deal with the lands must be made directly responsible to the Company.

The Company are, I understand, advised in this matter by Sir John Simon, but their contentions were rejected by Lord Hewart when he was Attorney-General, and are also considered by the present Attorney-General to be without foundation. Sir Douglas Hogg admits however that Clause 48 of the Letters Patent (which relates to the question of the unalienated lands and the reimbursement of the Company's deficits) is open to argument, and has advised that it should be held in abeyance pending the hearing of the Petition of Right.

Shortly after I came to the Colonial Office and the result of the referendum was known, I received a letter from the Company, which is attached to this paper, setting out their point of view and expressing the hope that a solution of the problem might be arrived at without litigation. After some discussion with the Treasury the Company were invited to submit semi-officially and "without prejudice" any suggestions they might wish to make for a settlement. This they have now done in a confidential memorandum attached, the proposals in which cover both Southern and Northern Rhodesia.

It is clear that, from the point of view of the Colonial Office, there would be definite advantages in an arrangement which would enable His Majesty's Government to hand over the unalienated lands and the land revenues to the new Administration free of the Company's charge upon them. There is a grave possibility of considerable friction and perhaps of further litigation arising out of the working of Clause 48 of the draft Letters Patent, since the Company will be always contending that the Crown Land Agent must act so as to obtain the largest possible sums from the lands in the shortest possible time. It is obvious from the political point of view that the Crown would find itself in an impossible position if it were bound to dispose of the lands without regard to the public interests of the territory.Embarrassment would also arise if in collecting payments it could not deal leniently with genuine cases of hardship. At present, for instance, the Native Commissioners collect rent from the natives living outside the reserves on the unalienated lands, and it is the custom to allow considerable indulgence to the natives in times of necessity when their food supplies are short; but when the Company give up the administration and are dependent upon the land receipts for their reimbursement, they cannot be expected to have much regard to administrative conveniences of this kind, and the Crown Land Agent will be constantly pressed to exact payment from the natives in full.

The Company contend that, even if their general claim to reimbursement in cash of the administrative deficits fail, they are entitled on the establishment of the new Government to payment in cash for the movable assets of the Administration, the surplus of debtor over creditor balances, and the value of sites occupied by public works and buildings and lands reserved for administrative and public purposes. The existence of these claims, particularly that in regard to the movable assets, may prove a difficult obstacle to surmount if the new Government is to be set up before they are disposed of.

So long as the Company stood out for their full claims as embodied in the Petition of Right, including the claim to interest which has been rejected by the Cave Commission, no settlement seemed possible. But their present proposals appear to me to indicate a more accommodating spirit, and I think that further negotiations are desirable. It will be observed that the Company put the total sum (including interest from the 31st March, 1918) which they claim to be due to them at £5,062,890, and that they are willing to accept in cash or its equivalent the sum of £3,750,000. This should be susceptible of further reduction, and I am disposed to think that a settlement of the matter at a figure of 3 or 3½ millions would not be an unreasonable one for all parties. The Union Government, who made a very generous offer to the Company, were prepared, if Southern Rhodesia had gone into the Union, to pay £6,215,000 with interest from the 31st March, 1922, for the same rights and assets, plus the Company's interest in the railways. It must be remembered that if the Company should succeed in their Petition of Right His Majesty's Government would have to pay the full sum claimed by the Company, and merely recover by degrees from the land receipts as they accrue. The administrative difficulties of such an arrangement are obvious.

I do not suggest that His Majesty's Government should pay off the Company and hand over the lands to the new Administration free, but I think it is very likely that the Elected Members would undertake to raise a loan to meet, at any rate, a very considerable part of the expenditure which might be necessary for this purpose, provided that the amount is at all within their compass, having regard to the limited resources of the territory. At present the position is that the new Administration will, in any case, have to raise a loan of about £1,100,000 to repay——

(a.) The advances which His Majesty's Government have to make for the purchase from the Company of public works and buildings, estimated at about £800,000;

(b.) The loan of £150,000 which was made to the Administration last year for public works.

(c.) The further loan of £150,000, which it is understood that the Company will apply for this year.

If the new Administration can acquire the Crown lands, they will be able to bear the charges of a larger loan, but not, I think, one of more than £2,500,000 in all. If we deduct from this the sum of £300,000, repayable to His Majesty's Government for the loan advances (b) and (c), this would leave a sum of £2,200,000 for payment to the Company. On the basis of a total payment of £2,200,000 to the Company, it will appear that assistance from His Majesty's Government to the extent of £1,050,000 would be necessary to make up that figure; and it would, I think, be reasonable for His Majesty's Government to provide this. The assistance necessary could, in the main, be provided by His Majesty's Government undertaking to transfer free of cost the works and buildings (estimated above at £800,000); and the further sum of £250,000 could be regarded as covering roughly the value of the movable assets which the new Administration will require.

When the draft Letters Patent were under consideration, in the autumn of 1921 the Delegation of the Elected Members who came to this country urged strongly that the public works and buildings should be handed over to them free, and this cannot be regarded as an unreasonable request. In the course of a Memorandum on the subject, the Chairman of the Delegation, Sir Charles Ooghlan, stated—

"In all other cases that the Delegation is aware of, such charges as the Imperial Treasury has incurred directly in providing buildings and works of the above nature in Imperial Dependencies, the buildings have been handed over, free of charge, to the incoming Government when the particular Dependency became annexed to a neighbouring Colony or received the grant of its own Constitution, and was thereby placed in a position to relieve the Imperial Government of further responsibility. This has happened in the case of the Cape Colony and of Natal and on the annexation to the former of the Colonies of Griqualand West and British Bechuanaland. Even in the case of the Union of South Africa it is, we understand, the fact that buildings therein connected with the obligations of Imperial Defence, and costing some £2,000,000, have recently been handed over to the Union Government at about one-tenth of their cost, in consideration of the latter undertaking the duties of defence heretofore devolving upon the Imperial Government. Southern Rhodesia proposes in like manner, on the grant of the Constitution, to undertake the usual obligations connected with Responsible Government, and so permanently relieve the Imperial taxpayer of any further outlay in this connection."

Mr. Churchill, however, was at that time strongly in favour of a policy of entry into the Union, and was not prepared to consider a request which might have the effect of weighing the scales in favour of Responsible Government. Now that the policy of entry into the Union must be regarded, for the time being, as rejected, it would be good policy to give the new Administration under Responsible Government as fair a start as possible.

My proposal therefore is that the Colonial Office, in consultation with the Treasury, should proceed to negotiate with the British South Africa Company and the representatives of the Elected Members on the basis that, if a settlement were possible which would place the new Government in possession of the unalienated lands, the land revenues and other assets, free of all claims from the Company, His Majesty's Government would assist, in the matter to the extent indicated above, viz., approximately £1,050,000.

[6649]
It would be my hope that this sum would be sufficient, but the Directors of the Company are admittedly in a difficult position vis-à-vis their shareholders, and their power to make concessions is necessarily limited, and I therefore cannot say that they will not hold out for more than £3,250,000. On the other hand, the Elected Members may not be prepared to find as much as £2,200,000. It is desirable therefore to leave some margin in order to avoid letting the negotiations break down over what may be a comparatively small sum, and it may consequently be necessary for His Majesty's Government to be prepared to contribute up to £1,350,000.

B.—Northern Rhodesia.

Northern Rhodesia is a territory with a native population of about 1,000,000 and with a white population of 3,600, and, although the present Administrator is also the Administrator of Southern Rhodesia, the administration of the territory is distinct from that of Southern Rhodesia, and the proposal for the grant of self-government to Southern Rhodesia does not, of course, extend to it. The administration, however, involves the Company in a yearly loss of about £100,000, and they are naturally unwilling to carry on in Northern Rhodesia once their responsibility for Southern Rhodesia is terminated.

The Company's Charter of 1889 provided that at the end of twenty-five years, and at the end of every succeeding period of ten years, the Crown would have the right to add to, alter or repeal any of the provisions of the Charter relating to administrative and public matters. By the Supplemental Charter of 1915 this provision was amended so as to enable Responsible Government to be established in Southern Rhodesia at any time after the 29th October, 1914. The administrative provisions of the Charter, so far as Northern Rhodesia is concerned, will come up for review in October 1924, unless indeed the Company's administration is terminated earlier with their consent.

As a result of the judgment of the Privy Council on the Company's position in Southern Rhodesia, the question of the Company's rights in Northern Rhodesia was naturally raised, and in June 1920 the Advisory Council representing the white settlers in Northern Rhodesia adopted a resolution advising that the question of the ownership of the lands and mineral rights in Northern Rhodesia should be submitted without delay to the Judicial Committee of the Privy Council. On receipt of the resolution it was referred to the British South Africa Company for their observations, and they replied in a letter setting forth their claims, which were that they were the owners of the mineral rights throughout Northern Rhodesia and of the unalienated lands in part of North-Western Rhodesia, and further that when their administration is determined they will be entitled to be reimbursed by the Crown for the administrative deficits, except a small portion incurred in North-Western Rhodesia prior to 1911.

A separate memorandum giving full details of the position with regard to the Company's claims is attached.8

The Committee appointed by Mr. Churchill early in 1921, under the chairmanship of Earl Buxton, to report on the political futures of the two Rhodesias, was asked to consider in regard to Northern Rhodesia, amongst other points, the question "whether it is possible to terminate Chartered Government pending the settlement of these questions (i.e., the Company's claim to land, minerals and the administrative deficits), and if not what further constitutional development is possible in the meantime?" The Committee's advice was to the effect that the claims of the Company so far as they were open to doubt, should be referred to the Privy Council, whose decision should be obtained as early as possible and before Chartered Government comes to an end in Southern Rhodesia, so that the Company's administration may end simultaneously in both Southern and Northern Rhodesia.

Mr. Churchill informed the High Commissioner that His Majesty's Government accepted the report of the Committee, and it has therefore been generally assumed in Northern Rhodesia that the Company's administration will shortly be terminated. If Southern Rhodesia gets Responsible Government in say October 1923, it would in fact hardly be possible to terminate the Company's administration of Northern Rhodesia at the same time. But it would be difficult to continue the Company's administration after October 1924, and there can be no question in any case of doing so for so long a period as ten years.

Since the Privy Council judgment in the Southern Rhodesia land case, the Company have adopted the same waiting policy in Northern Rhodesia as in Southern Rhodesia, and have cut down the administrative expenditure as far as possible. They have also found it necessary to impose additional taxation in the shape of an income tax.
tax, though even so the administration of the territory has involved during recent years deficits ranging from about £60,000 to £130,000 a year. These measures have naturally been unpopular with the settlers, and a condition of affairs has now been reached in which both the Company and the settlers are anxious that the Company's administration should be terminated as soon as possible. The Advisory Council which was set up during the war has not been a success in respect of facilitating relations between the Company and the settlers. It has protested twice against the Income Tax, and the necessary legislation has had to be enacted over its head. The protest which has been made against the legislation enacting the tax for the current financial year was apparently intended in the main as a demonstration against the existing regime, and though the enactment of the legislation was received quietly, the members of the Advisory Council have issued a letter suggesting that "it will be a waste of time and energy for the Council to meet again until a change has been made in the present system."

As indicating the general views of the settlers in Northern Rhodesia, it may be mentioned that the Resident Commissioner of Rhodesia, in commenting on the result of the elections for the Advisory Council held in February 1922, stated that "as regards the political aspirations of the settlers in Northern Rhodesia at the moment, it is only safe to say that they desire (1) the determination of the British South Africa Company's administration at the earliest possible moment and (2) no amalgamation of their territory with the Union of South Africa."

Recent correspondence shows also that the missionaries, while fully realising the excellence of the Company's native administration, appear to feel that the interests of the natives, particularly in matters relating to the land, would be best served by terminating the Company's rule.

It is clear that no adaptation of the present regime can make it work more smoothly. The Company have rejected the proposal of the Buxton Committee for the establishment of a Legislative Council, and it is doubtful how far, if they approved it, its adoption would afford any satisfaction to the settlers, since, unlike the position which has existed for some time in Southern Rhodesia, the elected members would necessarily have to be in a minority.

It appears, therefore, that the termination of the Company's administration in Northern Rhodesia before very long must be regarded as inevitable. Although the Burton Committee thought that a reference to the Privy Council with regard to the Company's claims would be necessary before this could take place, there would be definite advantages in avoiding such a reference by means of an arrangement with them if feasible. The proposed reference, apart from involving long and difficult litigation, would raise awkward questions as regards the position in Nyasaland, and it is not of course perfectly clear that His Majesty's Government would not find themselves saddled with the past administrative deficits, which amount now to over 13 millions, as in the case of Southern Rhodesia. The Law Officers, indeed, when the point was put to them in 1920, regarded it as one of doubt and difficulty, although on the whole they thought that the Company's claim was not well founded.

As regards the Company's claims to lands and minerals, the present view of the Colonial Office is that it is difficult to contest the Company's claim to the minerals, but that their claim to the lands, though this also has a certain strength, could hardly be admitted without a decision of the Courts. As against these claims His Majesty's Government have a claim against the Company in respect of such part of the sums which have been advanced to them for extraordinary military expenditure arising out of the late war, as may be regarded as attributable to the defence of Rhodesia. It has been thought in the past that a settlement of this claim, which would make the Company responsible for the cost of the operations up to January 1919—amounting to a little under a quarter of a million—could be accepted; and His Majesty's Government had agreed to waive the claim entirely if the result of the referendum in Southern Rhodesia had been in favour of entry into the Union.

It is therefore thought that the main lines which a fair bargain with the Company might follow is that His Majesty's Government, in consideration of the Company waiving their claims to the administrative deficits, and agreeing to a satisfactory settlement in respect of the land covered by the Lewanika Concessions in Northern Rhodesia, should consent to waive their claim in respect of the war expenditure and to take over the administration of the territory at an early date. The Company's proposals for a settlement in Northern Rhodesia are set out in the memorandum of the 21st February. They appear to afford a basis for further negotiations on the above lines, providing that the Cabinet agree that His Majesty's Government should undertake to relieve the
Company of the administration of Northern Rhodesia. Although this may involve the Treasury in having to find grants-in-aid, it is not impossible that a more economical system of administration may be brought about in the future by a partition of the territory which would bring the eastern portion into Nyasaland; but apart from this it seems difficult, from a Parliamentary point of view, to contemplate compelling the Company against their will to administer a territory in which the white settlers also are urgently demanding the termination of their administration.

Colonial Office, March 13, 1923.

ANNEXURES 1–3 (separately attached).

ANNEXURE 4.

Sir,
Downing Street, March 16, 1923.

It will be within the knowledge of the Lords Commissioners of the Treasury, both from recent official correspondence and from semi-official conferences, that the time has come when it is necessary for His Majesty's Government to take important decisions with regard to the problems which have arisen concerning Southern and Northern Rhodesia.

2. I am now to enclose, for their Lordships' information, a draft Memorandum which the Duke of Devonshire has had prepared for submission, if necessary, to the Cabinet. It will be observed that the policy outlined in the draft Memorandum involves His Majesty's Government entering into negotiations with the British South Africa Company with a view to a settlement, if possible, of the Company's claims in regard to both Southern and Northern Rhodesia; and that if such a settlement is to be attained it will be necessary, in the view of the Secretary of State, to give certain financial assistance from Imperial funds as regards Southern Rhodesia, as well as to relieve the Company of the administration of Northern Rhodesia—a course which will require a limited amount of immediate capital expenditure, and also, in all probability, an annual grant-in-aid.

3. The Secretary of State would be glad to know whether their Lordships are prepared to concur generally in the proposals submitted in the draft Memorandum. If so, it may be possible for the Secretary of State to proceed with the negotiations with the Company, in consultation with their Lordships. He would propose, however, in view of the important political and Parliamentary considerations involved, that, in any case, the matter should be brought to the notice of the Cabinet.

4. The Duke of Devonshire would be glad if he could have a very early reply to this letter, particularly in view of the need for expedition in consequence of the pending introduction of Responsible Government in Southern Rhodesia.

I am, &c.
(Signed) J. MASTERTON SMITH.

The Secretary, Treasury.

S. 15650/2. (b.)
Sir,
Treasury Chambers, March 29, 1923.

The Lords Commissioners of His Majesty's Treasury have had before them your letter of the 16th instant respecting certain questions which have arisen concerning Southern and Northern Rhodesia.

My Lords agree with the Duke of Devonshire that it would be desirable to enter upon negotiations with the British South Africa Company with a view to reaching a solution of the outstanding problems in regard to these territories.

As regards Southern Rhodesia, they understand that his Grace is advised, both by the present and the late Attorney-General, that the claim of the Company (which they are putting forward by Petition of Right) to be reimbursed the administrative deficits in cash instead of as payments are received from the sale of the unalienated lands could not be sustained, and consequently the object of the Government should be, in concert with Southern Rhodesia, to settle with the Company for a sum as near the
computed present value of the debt calculated on the rate of receipts from the sale of unalienated lands as can be reached in negotiation (plus the value of the movable assets). It is possible that it might be found that the Company would be prepared to accept a cash annuity in lieu of a fixed amount from the revenues of Southern Rhodesia, which would, in that event, receive the proceeds of the sale of lands.

My Lords note that his Grace suggests the raising of a loan by Southern Rhodesia, when constituted as a colony, up to an amount not exceeding £2½ million, which would be applicable in liquidation of the sum payable to the Company, but that he contemplates that any excess payment to the Company over £2½ million would be provided from the British Exchequer as a free grant, and in particular that a sum of £800,000, payable to the Company in respect of the buildings and movable assets required for the administration of Southern Rhodesia, should be found by the British taxpayer as a free gift to the colony. My Lords demur to the suggestion that it is incumbent on the British taxpayer to accept as a final charge the cost of these assets, and they do not think that the cases quoted are in fact analogous. In the case of the Union of South Africa, for instance, the Union was assuming the entire cost of its land defenses and Great Britain was relieved of the cost of maintaining troops which, before the war, had numbered 7,000 in South Africa; and in any case Southern Rhodesia is in a unique position, as my Lords understand, in that it is being endowed at its inception with the entire value of the unalienated lands in its vast territories—an asset which in the long run should prove to be greatly more valuable than the total of the sums which now fall to be paid to the Company. Although, therefore, my Lords do not wholly exclude the possibility of it being necessary to find from Votes of Parliament a sum additional to that which will be covered by the loan to be raised by Southern Rhodesia, they think that the case for finding this sum as a loan only is a strong one, and in any event they trust that it will be substantially less than the amount indicated in the Memorandum.

As regards Northern Rhodesia, my Lords are much struck by the indeterminate character of the position there. The Company claim the land, minerals and the administrative deficits, and both the Company and the white settlers are anxious that the administration by the Company—which involves the latter in a yearly loss of £100,000—should be terminated at an early date. It seems to be admitted, however, that it is impossible that the cessation of the Company's administration in Northern Rhodesia should synchronise with that in Southern Rhodesia, and my Lords think that there is something to be said for treating the problems of Southern and Northern Rhodesia as separate questions and deferring the latter until it is more ripe for settlement, and in particular until some decision has been reached as to the ownership of the unalienated lands. The suggestion that agreement might be reached upon the basis of His Majesty's Government relieving the Company of administration, which is likely to involve the taxpayer in a charge for Grant-in-Aid of not less than £100,000 per annum, and waiving the claim in respect of war expenditure in Northern Rhodesia, appears to them to be rather one-sided. Although, therefore, my Lords will not object to the Colonial Office, in consultation with this Department, entering into negotiations with the Company for a settlement simultaneously of the Southern and Northern Rhodesia problems, they are still disposed to anticipate that it may be found necessary to deal with them separately.

I am, &c.

(Signed)  R. S. MEIKLEJOHN.

The Under-Secretary of State,
Colonial Office.

16160/23.

Sir,

Downing Street, April 18, 1923.

I am directed by the Duke of Devonshire to acknowledge the receipt of your letter (S. 15650/2) of the 29th March, from which he has learnt with satisfaction that the Lords Commissioners of the Treasury agree to his entering upon negotiations with the British South Africa Company with a view to reaching a solution of the outstanding problems in regard to Southern and Northern Rhodesia. The Secretary of State would propose to take action accordingly at once.

2. The Duke of Devonshire notes that their Lordships suggest that the Northern Rhodesia problems should be reserved for separate and later treatment, but it does not appear to him that this course is feasible or desirable. Apart from the fact that the Company's proposals have been put forward as a single scheme for a complete and
comprehensive settlement of all questions outstanding between the Crown and Company, the course suggested would involve proceeding with the reference to the Judicial Committee of the Privy Council, as being the only means, apart from negotiation, of reaching a decision as to the ownership of the unalienated lands and other outstanding issues. This, as explained in the Secretary of State’s Memorandum, it was hoped to avoid. Moreover, the present difficulties in Northern Rhodesia are bound to be increased if the Company continues to administer the territory for any considerable length of time after it has become in Southern Rhodesia a purely commercial Company.

3. As regards Southern Rhodesia, the Secretary of State naturally shares their Lordships’ desire that any assistance to be provided from the British Exchequer should be as small as possible, but the matter is one on which there must be some compromise, and it will not, of course, be practicable to negotiate with the Company on the basis that His Majesty’s Government had successfully contested on all points the claims raised in the Company’s Petition of Right. Further, the data do not exist for computing with any approach to precision the present value of the debt to the Company calculated on the rate of receipts from the sale of unalienated lands, and even if His Majesty’s Government had established that the Company was entitled to look only to these receipts for reimbursement, the calculation of the present value of the debt on this basis would itself be a matter for negotiation with the Company.

4. As regards the suggestion that the British South Africa Company might be prepared to take an annuity in lieu of a lump sum, I am to observe that the Company offered, in their Memorandum of the 26th February, to accept part payment in the form of a Southern Rhodesia Government loan guaranteed by His Majesty’s Government; and the Secretary of State anticipates that the Company would certainly require that any annuity payable from Southern Rhodesia funds should likewise be guaranteed by His Majesty’s Government. He fears that this might give rise to complications, and he would much prefer, on political grounds, that any settlement with the Company should be an outright settlement which would dispose finally of their claims.

5. As regards the other suggestion of their Lordships, viz., that any sum which it may be necessary for His Majesty’s Government to find, additional to that which would be covered by the loan to be raised by Southern Rhodesia, should be treated as a loan and not as a free grant, I am to enquire whether the Secretary of State correctly understands that their Lordships would agree to such a loan being treated as one on which no interest would be required to be paid for a period of years, after which the position could be reviewed in the light of the financial position of Southern Rhodesia.

6. I am to add, with reference to their Lordships’ remark that Southern Rhodesia would be in a unique position in being endowed with the value of the unalienated lands, that the normal arrangement, both in the Dominions and in the Colonies, is that the Crown lands are vested in the local Government, and their proceeds available for local needs. Consequently, if the Crown lands in Southern Rhodesia had to be retained by His Majesty’s Government as contemplated in the draft Letters Patent, a most unusual situation would arise. At the same time it must be borne in mind that, with the past assent of the Imperial Government, the mineral rights of the whole territory have been alienated to the British South Africa Company.
The British South Africa Company to the Colonial Office.

(Received 25th November, 1922.)

[Answered by No. 38197.]

The British South Africa Company,
Rhodesia House,
2, London Wall Buildings,
London, E.C.2,

23rd November, 1922.

My Lord Duke,

The result of the recent Southern Rhodesia referendum would appear to have made it certain that the burden of administration which the British South Africa Company has carried in Rhodesia for more than thirty years is to be transferred to other shoulders, at an early date.

If the result of the referendum had been in favour of the incorporation of Southern Rhodesia in the Union of South Africa, the main questions outstanding between the Crown and the Company would have been at once disposed of. But as matters stand all those questions remain unsettled and create a situation of great difficulty, and the present moment, at which simultaneously with the holding of the referendum, new Ministers who have no personal responsibility for the past dealings of the Crown with the Company, have entered upon the direction of the affairs of the Colonial Office, appears to be an opportune one for reviewing the history of the events which have led up to that situation.

The Company's administration of Mashonaland began in 1890, and in 1894, after the Matabele War of 1893, was extended over the whole of what is now Southern Rhodesia.

That the Company was willing in 1894 to accept at its own cost the necessarily onerous and expensive task of Government was due to the fact that it believed that it owned the principal assets of the territory, namely, the minerals, and subject to the duty of making proper provision for the requirements of the natives, the land, in virtue of concessions granted by Lobengula, who at the time of the grants had been the acknowledged native sovereign of the territory. These concessions had been ratified and approved by the Crown after full examination of them; and the Company might reasonably believe that if the Crown entertained any doubts as to the rights which the Company claimed when it undertook to bear the expense of Government, still more if the Crown cherished any idea that those rights, or some of them, belonged not to the Company but to itself, it would have mentioned the fact, and would not have allowed the Company to appeal to the public to invest its money on the faith of the Company's undisputed enjoyment of those rights.

So far as the mineral rights are concerned, the Crown has done nothing to falsify the Company's reasonable expectations. The Company's enjoyment of them has not been and is not now questioned.

The history of the land rights has been very different. For many years, however, nothing occurred calculated to throw doubt upon the Company's position in regard to them. On the contrary, statements officially made on behalf of the Crown were calculated to confirm it.

On the 18th February, 1898, the Company submitted to the Colonial Office that "in view of the large expenditure and the heavy financial responsibilities of the Company in connexion with the administration of Southern Rhodesia, all future administrative expenditure not met by Revenue, as also a fair proportion of past expenditure of the same nature, should be regarded as a first charge on the country, and eventually be constituted a public debt." The reply received from the Colonial Office on the 18th July, 1898, was that the Secretary of State "must decline to pledge His Majesty's Government in advance to acknowledging anything in the nature of a public debt, or of a charge on the administration as distinguished from the Company itself, which has been placed in possession of all the assets of the country." The vitally important words with which the above quoted extract concludes were repeated in another letter from the Colonial Office of the 13th March, 1906, dealing with a proposal to issue loans on the security of the Administrative revenue of Southern Rhodesia, for expenditure upon public purposes. This letter
reiterated "the strong objection which His Majesty's Government entertain to the principle of creating a public debt of Southern Rhodesia, and placing a charge of that nature on the revenues of the territory as distinguished from those of the British South Africa Company, which has been placed in possession of all the assets of the country."

It is not contended that the attitude taken up by the Crown in these letters was unreasonable, having regard to the basis on which it rested. It is that basis itself, the assertion that the Company had been placed in possession of all the assets of the country, which quite clearly included the land, that is important. Nor is it contended that possession is the same thing as ownership. But it would be incredible, were it not the fact, that the Crown, having itself placed the Company in possession of the land, and having maintained for so many years the attitude above described, should afterwards and without warning have sought to deprive the Company of its possession of the land without making good to it the value of that possession.

The Company, prohibited by the Crown on the express ground of its possession of (inter alia) the land from raising funds for the discharge of its duties by the method which it had proposed, was obliged to obtain fresh capital by issuing new shares. In fact, between 1898 and 1906, £2,926,937 were raised by the issue of shares in the Company. After 1906, £2,339,708 were similarly raised. In appealing to the public for fresh money the Company naturally placed before its shareholders what had been officially stated by the Crown with regard to "all the assets of the country," including the land, the Company's possession of which constituted an essential part of the security which was being offered to the public in return for its money, and laid great stress upon that possession. The Crown stood by, looked on, kept silence and did nothing.

For some time before 1906, as the Crown must have known, private individuals in Southern Rhodesia had been questioning the Company's rights in regard to the land, and had been claiming that in some way or other it "belonged to the people," or that the proceeds of it could only properly be used for public purposes. In 1908, in pursuance of a resolution of the Legislative Council, this matter, along with other matters in dispute between the settlers and the Company, was referred to His Majesty's Government. The then Secretary of State for the Colonies replied in a despatch to the High Commissioner for South Africa of the 25th February, 1909, that "The questions which His Majesty's Government had been asked to decide, were to a large extent matters which, unless they could be settled by agreement between the parties concerned, did not appear under present circumstances to be susceptible of any binding solution except by the Courts of Law, and that, even were His Majesty's Government to undertake to express an opinion, they would not be able to compel either side to acquiesce in the decision, if there should be any reason for objecting."

This reply is intelligible enough on the natural assumption that the Crown was maintaining the view with regard to the Company's position in relation to the land which it had asserted in 1898, and again in 1906, and was taking the line that if anybody else chose to dispute that position he must either make his own agreement with the Company or go to law. But, disclaiming as it does in the plainest terms any idea of the Crown being a party to a dispute on the subject, it is utterly irreconcilable with a subsequent claim by the Crown to be itself the owner of the land.

Even when at the beginning of 1914 the then Secretary of State for the Colonies suddenly announced that he had decided that the dispute between the Company and those who challenged its position in relation to the land must be settled, and that he proposed to refer it to the Judicial Committee of the Privy Council, the Company's opponents being represented by a Committee of the Elected Members of the Southern Rhodesia Legislative Council, there was no indication that the Crown had been asked to decide were to a large extent matters which, unless they could be settled by agreement between the parties concerned, did not appear under present circumstances to be susceptible of any binding solution except by the Courts of Law, and that, even were His Majesty's Government to undertake to express an opinion, they would not be able to compel either side to acquiesce in the decision, if there should be any reason for objecting.

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The Company accepted these assurances in good faith, acquiesced in the reference to the Judicial Committee, and agreed that its judgment should be final and binding. Not long afterwards the Crown went back on its assurances without a word of warning to the Company, and itself appeared before the Judicial Committee as directly claiming the land. This was a complete change of the position under which the Company acquiesced in the reference.

The result of the long proceedings before the Judicial Committee of the Privy Council was a judgment declaring, in effect, that the Crown was, as it claimed to be, the owner of the Southern Rhodesia land, but that if the land was taken out of the hands of the Company, the Company was entitled to be duly reimbursed for the out of pocket expenditure incurred by it as agent for the Crown in carrying on the administration of the territory and in dealing with the land. The amount of that expenditure was fixed by Lord Cave's Commission as at 31st March, 1918, and stands to-day at rather over £3,000,000. Over and above this sum the present value of the Company's public works and buildings in Southern Rhodesia stands at about £750,000 of its movable assets used for administrative purposes at about £300,000, while the debts owed to it on Southern Rhodesia Administrative Account stand at about £60,000.

The late Secretary of State for the Colonies in anticipation of the grant of Responsible Government to Southern Rhodesia, the form of Government which the people of the territory have now chosen by their vote at the recent Referendum, prepared and published draft Letters Patent providing for that form of Government. Under the relevant clauses of these draft Letters Patent, if brought into operation, the land would be taken out of the hands of the Company, and placed in those of the Crown, while the reimbursement to which the Company is entitled would be in effect withheld from it.

The Crown, denying the Company's contention that interest must be paid on the sum due to it as from 31st March, 1918, the date as at which the sum due was first authoritatively established, has contended that the proceeds of further sales or leases of the land are the sole security for the Crown's debt to the Company, that is to say, that they are the only source from which any funds will be made available for any repayment to the Company; that the Crown, the debtor, can take the security into its own possession and away from the Company, the creditor, can place a nominee of its own in charge of it, and pay him out of the proceeds of it, can instruct him in his dealings with it to have regard to divers other considerations of public policy in preference to the duty of repayment to the Company; and that the Company must be content merely to accept annually any nett revenues that may be derived from it, if indeed there be any under such arrangement, until the total of them equates with the bare principal of the sum owed to the Company on the day of the Crown's taking the land out of the Company's possession. It is manifest that the date of this equation would not be reached for very many years, if ever, and that "repayment" of a debt without interest spread over an indefinitely long period of time, is not in any real sense repayment at all.

The arrangement therefore which appears to have commended itself to the Crown, and is provided for in the draft Letters Patent, is such as to deprive the Company of any effective reimbursement, notwithstanding that the judgment of the Judicial Committee of the Privy Council is expressly based upon the Company's right as an agent to such reimbursement.

Nor is this all. The Crown has apparently claimed that it can at its pleasure diminish, what according to it is the Company's sole security by subtracting therefrom such areas of land as may at any time be required for government purposes, i.e., the Crown's own purposes—without payment; and has even gone the length of claiming that the mere act of setting up in Southern Rhodesia a new form of administration in place of that of the Company will have the mysterious effect of transferring from the Company to the Crown the property in the Company's moveable assets used for administrative purposes, such for example, as office furniture, or police and defence equipment, and in the debts owed to the Company on administrative account. In return for these assets the Company must, in the Crown's contention, look for repayment of the same illusory kind and from the same source as in the case of the Crown's main debt. For the public works and buildings belonging to the Company, which, unlike any of its other assets, the Company's Charter gives the Crown the right to take on payment of compensation for them, the Crown has admitted that it must pay, but has indicated clearly that it is not prepared to pay fairly for anything else.
The Company was naturally bound to resist by any means open to it claims so manifestly contrary to the spirit and letter of the Privy Council Judgment. Accordingly, on receipt from the Colonial Office of a draft of the Responsible Government Letters Patent based on these claims, it intimated to the Secretary of State that if they were persisted in it would be compelled to seek justice in the Courts, and to sue for full repayment of the debt due from the Crown to the Company on the termination of the Company's administration of Southern Rhodesia, with interest thereon from 31st March, 1918. The draft Letters Patent having subsequently been made public in a form substantially unamended, and the alternative of incorporation in the Union of South Africa having been refused by the Electorate of Southern Rhodesia, the Company has now filed a Petition of Right in the sense already indicated.

There, at the present moment, matters stand, but it is worth while to observe that previous Secretaries and Parliamentary Under Secretaries of State have bound themselves by a long series of pledges to Parliament not to make any payment or to place any liability upon the taxpayers of this country in connexion with the settlement of the Southern Rhodesia question without the prior approval of Parliament. The draft Responsible Government Letters Patent have, however, been issued, accompanied by a virtual promise that a Constitution based upon them will be set up if the Electorate of Southern Rhodesia should vote, as it has now voted, in favour of them, without the approval of Parliament having been either asked or obtained. Even on the Crown's own admission the effect of what has been done will be that the Crown will have to pay for the Company's public works and buildings, trusting to the ability of a new Colonial Government which does not yet exist to repay to the Crown the sum so spent within twelve months of its coming into existence, while contingently on the Company succeeding in whole or in part in its Petition of Right, a liability which may amount to over £5,000,000 is imposed on the taxpayers of this country, without recourse against the new Colonial Government.

It is not therefore from the point of view of the Company alone that the Crown's proceedings may give justifiable cause for complaint. In Northern as in Southern Rhodesia the recent actions of the Crown in regard to the Company have been little calculated to inspire confidence in the Crown's attitude.

In Northern as in Southern Rhodesia the Crown has allowed the Company to establish an administration which is unanimously recognized by all competent judges to be a very good one, but which has cost the Company dear, and to do so on the faith of land and mineral concessions recognized by the Crown as valid. In Northern as in Southern Rhodesia the Crown has for many years stood by and watched the Company spending its money on the work of Government without questioning its rights. The Company, however, thought it prudent to review its position in the North in the light of the Judgment of the Judicial Committee of the Privy Council regarding the South, and two years ago, in November, 1920, formulated in a letter to the Colonial Office what it was then advised that that position was. The Crown has indicated vaguely that it does not agree with the Company's statement; but so far all the efforts of the Company to induce the Crown to say clearly in what respects it disagrees with it and what the Crown itself claims to be the true position have proved unavailing. The Crown has contented itself with suggesting that fresh proceedings before the Judicial Committee of the Privy Council should take place upon issues undefined. This amounts to a suggestion that the Crown and the Company should enter upon yet another long course of tedious, costly and probably inconclusive litigation without even knowing that any dispute exists between them incapable of a fair and rational settlement by agreement, and, apparently, that in the meanwhile the Company's heavy out-of-pocket expenditure on the government of Northern Rhodesia should go on.

The Company cannot believe that His Majesty's advisers will, upon full consideration, adhere to a suggestion so unbusinesslike and so unfair. Enough has been said in regard both to Northern and Southern Rhodesia to show that a problem exists calling for the early and serious attention of His Majesty's Government. So far the treatment of the Company by the Crown has
been such that it can occasion no surprise if the Company is able to derive only a
very modest degree of satisfaction from the complimentary paroles concerning the
Company's great services to the Empire which have fallen so freely from the lips
of Ministers in the recent past. We have written frankly in the hope that:
the Rhodesian problem may, at the present crisis in the affairs of the territory, be
approached by His Majesty's Government in a fair spirit, and that a serious effort
may be made to arrive at a solution of it, which may be consonant with elementary
justice, and may make unnecessary what otherwise promise to be well nigh endless
processes of litigation.

I am, &c.,
P. LYTTELTON GELL,
President.
For and on behalf of the Board of the
British South Africa Company.
The proposals in this memorandum are submitted in response to the invitation extended to the Company's representatives in the statement handed to them by the Parliamentary Under Secretary of State for the Colonies on the 16th February. For convenience the proposals have been arranged under the separate headings of Southern and Northern Rhodesia, but they are intended to be read together and are submitted without prejudice as a single scheme for a complete and comprehensive settlement of all questions outstanding between the Crown and the Company.

SOUTHERN RHODESIA.

The full amount to which the British South Africa Company is advised that it is entitled, as at 31st March, 1922, on the assumption that the Crown takes over all the Public Buildings and Moveable Assets used for administrative purposes, is £5,446,890, from which, however, falls to be deducted a sum of £384,000 in respect of Crown Land appropriated by the Company for its own commercial purposes or granted for valuable consideration other than cash. Thus the total sum which the Company on the above assumption would claim as at 31st March, 1922, is £5,062,890.

The Company is advised that its claim is a claim directly against H.M. Government. The Company recognises however that, in practice, the complete satisfaction of what it is advised are its legal claims would be likely to lead to an impossible position for the contemplated new Responsible Government of Southern Rhodesia, and that the prosecution of its claim by means of litigation would lead to very long delay in the establishment of the system of Responsible Government for which the Southern Rhodesian Community has voted, and therefore would be prepared, in order to obtain a prompt and final settlement of all questions outstanding between itself and the Crown in regard to Southern Rhodesia to accept in cash or its equivalent on the 1st October 1923, the sum of £3,750,000 in full satisfaction of its claims. This would involve the reduction of the Company's total claim by the amount of £1,312,890.

In consideration of this payment free possession would be obtained of all the assets referred to under the heading "Southern Rhodesia Administrative and Land Account," which appears in the Company's latest Balance Sheet, i.e., the Balance Sheet as at 31st March, 1922, see page 31 of the Report and Accounts annexed hereto, Annexure 1.

Annexure 2 hereto (a statement compiled as at 30th September, 1921) shows under separate headings what the Crown would be acquiring by getting the unalienated land of the territory free from any rights or claims by the Company in respect of it.
Annexure 3 shows what it is estimated should be in normal times the cash receipts from the land for the next 10 years accruing to any authority placed in possession of the land and taking over the existing rights of the Company as against persons who have taken up land.

It would be necessary to arrange for the issue to the Company of some document securing its title to those areas of unalienated land on which it is at present carrying on its farming and ranching operations, and for which, as for any grants of land which may have been made to third parties for valuable consideration other than cash, full allowance would be deemed to have been made to the Crown in the settlement above suggested.

If the Crown which it is assumed would wish to endow the Company's successors in the Administration with the assets under discussion in order to start them on their career with the best possible chances of success should, at the same time, consider that those successors should assume part of the financial burden of acquiring the assets, the Company would be prepared to accept payment of such part of the £3,750,000 above referred to as H.M. Government might think proper in the form of a Southern Rhodesia Government loan guaranteed by H.M. Government, issued on terms not less favourable than those upon which H.M. Government could raise money in the open market at the date of issue.

If H.M. Government should wish for the Company's suggestions or advice in any matter connected with the allocation as between the Crown and the Southern Rhodesia Government of the payment of the £3,750,000 to the Company, the Company would be most willing to offer such suggestions or advice.

NORTHERN RHODESIA.

The Company's Northern Rhodesia Administration to end simultaneously with its Administration of Southern Rhodesia.

The Company to abandon all claim for past Administrative deficits.

H.M. Government to make no claim against the Company for Military Expenditure. It is submitted that the fact that the Crown would be waiving what it may be advised are its rights in this respect only as part of a general compromise arrangement for the settlement of a number of questions outstanding between it and the Company would afford a sufficient answer to any suggestion that the Crown would be compromising its position in regard to any other African Colony or Protectorate against which it may be disposed to prefer claims in respect of war expenditure.

The Crown to take over at the 1st October, 1923, (i) the Company's movable assets used for administrative purposes, the estimated value of which is shown on page 2.
31 of the Balance Sheet at 31st March, 1922, at £116,888, and which the Company is advised have been kept up to approximately the same value to-day.

(i) the Public Works and Buildings (which are shown at cost £407,798) at a figure which shall make a fair allowance for depreciation and for expenditure incurred since 31st March, 1922.

The Company is advised that it would be fair to write off £100,000 to depreciation, while the estimated expenditure for 1922-23 is £80,000. Thus the figure of £407,798 would be reduced by £80,000 to £327,796. The Company would accept for the moveable assets and public works and buildings taken together the round sum of £440,000.

The Crown to take over existing civil servants with all their rights and to be liable for the pensions of civil servants who have retired on pension.

The Crown to recognise the Company as the owner of all the mineral rights throughout Northern Rhodesia.

The Crown forthwith to appoint a Native Reserves Commission or Commissions to make adequate provision for land for exclusive native occupation throughout Northern Rhodesia. Such Commission or Commissions to deal first with the Areas where the question of the definite assignment of native reserves is most pressing. These areas are (a) The areas traversed by the line of railway. (b) The North Charterland area.

The Crown to recognise the Company's ownership of 3 areas of land in the northern part of North-eastern Rhodesia acquired by the Company under title from the African Lakes Corporation, and of so much land in what in 1911 was known as Barotseland North Western Rhodesia, as may lie outside the boundaries of any native reserves.

The Company's land so long as it remains in its hands, to be held by it free of any land tax and no further question to be raised by the Crown about any past land transactions of the Company in Northern Rhodesia.

In consideration of the above the Company to undertake that pending the report of the Native Reserves Commission it will not alienate any land in North-Western Rhodesia without the consent of the local Government, and that it will at any time transfer free of charge to the local Government or Governments of Northern Rhodesia any areas of land remaining in its hands at any time reasonably and bona fide required for administrative as distinct from settlement purposes.
The Crown to make such arrangements as will secure that any agreement between itself and the Company shall be binding upon any local Government or Governments which may hereafter be established in Northern Rhodesia or any part of it; and that in any instrument establishing such local Government or Governments the Company's land, Mineral and railway rights shall be accorded a measure of protection not less effective than that given to the Company's mineral and railway rights in the Draft Southern Rhodesia Letters Patent.

26th February, 1923.
### Annexure 2.

**CROWN LANDS AND INTERESTS ETC.**

<table>
<thead>
<tr>
<th>Description</th>
<th>Areas at 30th Septr. 1921</th>
<th>Annual Value at 30th Septr. 1921</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacant unreserved areas (other than those referred to below) including outspans</td>
<td>45,559,910</td>
<td>-</td>
</tr>
<tr>
<td>Native Reserves.</td>
<td>19,653,813</td>
<td>-</td>
</tr>
<tr>
<td>Unpaid instalments in respect of the purchase price of lands granted under Permits of Occupation or sold under D/1 Grants.</td>
<td>4,985,521</td>
<td>54,897</td>
</tr>
<tr>
<td>Outstanding purchase price D/1 Titles.</td>
<td>12,161</td>
<td>881</td>
</tr>
<tr>
<td>Areas leased as Farms, Store Sites, Mission Sites, Grazing Grounds.</td>
<td>279,975</td>
<td>13,272</td>
</tr>
<tr>
<td>Unsold Township Stands in the five Municipalities (Municipal valuation) and areas other than Stands reserved.</td>
<td>3,268</td>
<td>-</td>
</tr>
<tr>
<td>Unsold Township Stands other than those in the five Municipalities (at an average price throughout)</td>
<td>2,169</td>
<td>-</td>
</tr>
<tr>
<td>Stands sold not fully paid for</td>
<td>-</td>
<td>384</td>
</tr>
<tr>
<td>Township Commonages other than those in the five Municipalities (from £8. to £10. per acre)</td>
<td>84,270</td>
<td>-</td>
</tr>
<tr>
<td>Land reserved for future Township Commonages.</td>
<td>26,235</td>
<td>-</td>
</tr>
<tr>
<td>Land reserved for Soldier Settlers' Scheme, etc.</td>
<td>105,577</td>
<td>-</td>
</tr>
<tr>
<td>Areas reserved for and occupied by or necessarily used in connection with Public Buildings and Works.</td>
<td>21,966</td>
<td>-</td>
</tr>
<tr>
<td>forward ...</td>
<td>70,654,864</td>
<td>69,234</td>
</tr>
<tr>
<td>Areas (other than those on which public buildings and works exist) reserved for Administrative purposes</td>
<td>1,741</td>
<td>-</td>
</tr>
<tr>
<td>Crown's half interest in Municipal Commonages</td>
<td>73,844</td>
<td>-</td>
</tr>
<tr>
<td>Quit Rents: 20 years' purchase of annual rents current at 30th September 1921 in respect of 22,170,690 acres of land</td>
<td>-</td>
<td>17,795</td>
</tr>
<tr>
<td>Timber Concession; Wankie</td>
<td>798,867</td>
<td>2,500</td>
</tr>
<tr>
<td>Gwelo Small Holdings</td>
<td>2,267</td>
<td>-</td>
</tr>
<tr>
<td>Mining Sites: ½ of 20 years purchase</td>
<td>-</td>
<td>400</td>
</tr>
<tr>
<td>Native Rents: 20 years purchase</td>
<td>-</td>
<td>6,500</td>
</tr>
<tr>
<td>Balance of Railway farms to which title not issued</td>
<td>188,401</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>71,707,034</td>
<td>£236,499</td>
</tr>
<tr>
<td></td>
<td>1923</td>
<td>1924</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Permit of Occupation</td>
<td>33,071</td>
<td>35,708</td>
</tr>
<tr>
<td>Purchase Price</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instalments of D/l</td>
<td>1,341</td>
<td>1,341</td>
</tr>
<tr>
<td>Sales already made</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instalments Future D/l</td>
<td>5,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Sales (i.e. 1/20th of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>£100,000 per annum from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>year ending 31st March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1923)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Cash Sales</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Stand Sales including</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rentals and D/l</td>
<td>94,761</td>
<td>99,318</td>
</tr>
<tr>
<td>Interest etc.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

£ 149,173 | 162,367 | 178,584 | 180,674 | 200,759 | 212,256 | 221,093 | 361,543 | 546,693 | 171,128 | 2,882,718.
In June 1920 the Advisory Council in Northern Rhodesia adopted a resolution advising that the question of the ownership of the land and mineral rights in Northern Rhodesia should be submitted without delay to the Judicial Committee of the Privy Council. On receipt of the resolution it was referred to the British South Africa Company for their observations and they replied in a letter setting forth their claims which were (a) that they were owners of the mineral rights throughout Northern Rhodesia*, of the unalienated land in Luvungi’s territory, i.e., what was North Western Rhodesia at the date of the Order in Council of 1911 (when North Western and North Eastern Rhodesia were amalgamated), and of three areas in North Eastern Rhodesia, and were entitled to all receipts therefrom past and future.

(b) that the Company was responsible for the deficit on the administration of North Western Rhodesia prior to the issue of the Order in Council of 1911.

(c) that if and when the Company’s administration of Northern Rhodesia is determined it will be entitled to be re-imbursted by the Crown for the accumulated deficit on the administration of North Eastern Rhodesia before 1911 and of Northern Rhodesia since that date, the Crown being entitled to all net receipts from the land in what was North Eastern Rhodesia, except from so much of it as is owned by the Company.

Early in 1921 the Buxton Committee was appointed and it was asked to advise inter alia whether the Company’s claims should be referred to the Privy Council for settlement or whether they should if possible be settled by agreement between the Crown and the Company. The Committee advised that the claims of the Company to the land and minerals “in so far as they are open to doubt”, and in any case their claims to any reimbursement of the administrative deficits (including the question of the extraordinary military expenditure incurred by the Company in the War, which had also been disputed) should be decided by a Court of Law. That for this purpose a reference should be made to the Privy Council and that the Legal Advisers of the Crown should formulate for submission to the Privy Council the precise points on which the Company’s claims cannot be accepted.

A list of questions requiring determination has been prepared by the Law Officers and communicated to the Company but difficulty has been experienced in obtaining the agreement of the Company to a reference owing to the fact that the Law Officers have not felt able at the present stage to furnish any statement of the Crown’s case, beyond informing the Company that it was not possible to accept their contention with regard to the
liability for the administrative deficit. This difficulty has been due partly to the doubts which have been felt as to the extent of the native interests and the method in which such interests would be presented before the Privy Council and partly to a desire not to prejudice any native rights by possible admissions on behalf of the Crown.

The Company's claims in Northern Rhodesia are based upon two different sets of concessions.

(a) In North Eastern Rhodesia on certificates of claims issued in 1893 by Sir H. Johnston confirming concessions from various independent chiefs by which the Company acquired the whole of the mineral rights in what was then North Eastern Rhodesia (down to the Kafue River) and three comparatively small freehold areas near the north eastern frontier.

(b) In North Western Rhodesia on the various Lewanika concessions of 1900-09, which have been confirmed by His Majesty's Government subject to certain conditions. These concessions give the Company land and mineral rights outside the Berotse Reserve. A question arises as to the area to be regarded as covered by the Lewanika concessions. The boundaries of North Western Rhodesia were extended in 1905 from the Kafue River up to a line drawn across the narrow part of Northern Rhodesia which lies between Portuguese East Africa and the Belgian Congo. The Company apparently claim that their land rights under the Lewanika concessions extend to the new boundary. But if so they would overlap the area covered by their mineral concessions in North Eastern Rhodesia, the grantors of which were described by Sir H. Johnston as the "sole and only rightful owners of the land". It would seem probable therefore that His Majesty's Government must hold that the rights obtained by the Company under the Lewanika concessions extend only up to the Kafue River. When allowance is made for the fact that the Berotse reserve is also excluded, the land rights of the Company become, on this view, comparatively small.

The Crown on the other hand has never put forward any claim to the land and it would seem to follow that the greater part of the land in Northern Rhodesia must be regarded as belonging to the natives. Moreover Yetu, the present Paramount Chief of the Berotse has presented a petition claiming in effect that the Lewanika Concessions were granted to the Company in their administrative and not their commercial capacity. This contention finds some support in the language which has been used in the past in correspondence between the Colonial Office and the British South Africa Company e.g. in a letter written on the 15th April 1909 the Company were informed that the land revenue in respect of Northern Rhodesia could not be treated as an asset accruing to the Company absolutely irrespective of any provision being made for the expenses of administration. When however the position with regard to Northern Rhodesia was put
to the Law Officers in 1920 they advised that though the claim of the Company in respect of the land comprised in the Lewenike concessions was open to some doubt they felt that this statement was not sufficient to qualify the approval of the Concessions in such a way as to affect the title of the Company to the land as a commercial asset. But this was before Yet's petition and it seems clear that the position in regard to the land in North Western Rhodesia is sufficiently doubtful as to make it impossible for His Majesty's Government to accept the Company's claim to full ownership even merely over the area bounded by the Kofac, without a decision by the Courts.

The mineral rights on the other hand do not appear to be open to question. It may be mentioned that when the Lewenike Concession of 1900 was confirmed the mineral rights were exempted from the prohibition of alienation and the Company have legislated on the basis that the mineral rights throughout Northern Rhodesia are their private property.

The Company's claim to reimbursement of the administrative deficits is limited as regards the period before the date of the Order in Council of 1911 to the expenditure incurred in North Eastern Rhodesia. This is because in the Order in Council of 1899 providing for the administration of North Western Rhodesia by the High Commissioner for South Africa it was expressly provided that the Company were to make good any deficiency in the cost of the administration. The reason for the absence of any similar provision in the North Eastern Rhodesia Order in Council of 1900 is no doubt due to the fact that this Order in Council vested the general administration of the territory in the Company and it was evidently contemplated that this carried with it complete financial responsibility. The two divisions of Northern Rhodesia were amalgamated in 1911 at the request of the Company who had asked for the extension of the principle of administration contained in the North Eastern Order in Council of 1900 to the whole territory on the ground that "this would have the advantage of terminating the anomalous situation which arose in 1899, when the Company at the request of the Secretary of State undertook responsibility for the administrative deficits of North Western Rhodesia without being vested at the same time with the rights, powers and duties of direct administration". It is now apparently claimed by the Company that although by the Order in Council of 1911 they acquired such rights, powers and duties of direct administration, the Crown is liable for the administration deficits since that date.

The Company's case is of course based on the doctrine of agency established by the Privy Council in the Southern Rhodesia land case. The theory if applied to North Western Rhodesia would produce however the paradoxical result that in respect of the period 1899-1911 when the administration was in the hands of the Imperial Government, the Company are responsible for the deficits, whereas in respect of the period after the
administration was placed in the hands of the Company, the Imperial Government are to be responsible. In North Eastern Rhodesia also before the Company undertook the direct administration, it reimbursed the expenditure incurred by the Crown in administering the territory and afterwards for a number of years paid an annual contribution to the British Central Africa and Nyasaland administrations towards the armed forces of the Protectorate on the understanding that they would be available for the military defence of North Eastern Rhodesia; and such a contribution seems difficult to reconcile with the theory that the Company is in a position of a mandatory entitled to reimbursement. Attention may also be drawn both in this connection and in connection with Yet's above mentioned petition, to the fact that by the Lewsbit concession the Company bound itself to perform various administrative services.

As regards the extraordinary war expenditure the Company appear to claim that as a Protectorate Rhodesia is free of all responsibility for defence against foreign aggression and that in any case the Company cannot use their funds for the maintenance of a force on active service, since the Order in Council of 1898 provided for the direct control by the High Commissioner of the military police forces. This provision was made as a result of the circumstances connected with the use of the Company's forces in the Jameson raid. It is clear that neither of the Company's propositions can be admitted, since the first would be contrary to the general principle recognised in all other Protectorates and the second would mean that the Company in view of the special position created by their past loyalties were to be placed in a more favourable position than the administrations of other Protectorates. The point in dispute relates only to the defence expenditure which it is recognised can amount only to a small portion of the total of about 2 millions which has been advanced to the Company for their war expenditure. The Company have suggested, for the purpose of defining the Crown's claim, that a line could be drawn between the defence and offensive expenditure as at the date when General Northey took command of the forces on the Northern Rhodesia frontier in January 1916. Although the War Office advised that it was not possible to differentiate in a military sense between the defence of Northern Rhodesia by purely passive means and the more active methods employed by General Northey, the Treasury were prepared to agree that the matter should be settled on the basis that the Company should be liable for all expenditure incurred in respect of the period before General Northey took over command, and His Majesty's Government should be liable for the remainder. The suggestion was not however put to the Company, since in view of the Company's claim to reimbursement of the administrative expenditure in Northern Rhodesia (which would cover the military expenditure) the Buxton Committee thought that the question of the liability for the war expenditure should be included in the reference which they suggested should be made to the Privy Council.
One of the difficulties which arise in connection with the proposed reference to the Judicial Committee is the doubt felt as to the respective rights of the Crown and the natives in Nyasaland. A considerable portion of this territory is covered by concessions partly freehold partly mineral held by the Company under Certificates of Claim granted by Sir E. Johnston at the same time and in the same terms as those granted in respect of North Eastern Rhodesia. These concessions are recognised by the Crown to-day. It would follow from the view suggested above as to the land in North Eastern Rhodesia being still the property of the natives, that the position would be the same in Nyasaland except in so far as the Crown has acquired any land rights there through treaties with the natives. It appears however that this view might place the Nyasaland Administration in a difficult position.

Another point which arises in connection with the position in North Eastern Rhodesia is the difficulty created by the British South Africa Company's grant in 1896 of an area of 10,000 square miles of land in the Fort Jameson district to the North Charterland Exploration Company. This grant was made subject to native rights, but in view of the British South Africa Company's limited rights in North Eastern Rhodesia the validity of the grant is open to doubt and the importance of the question is enhanced by the special interest taken in native affairs by the missionaries in that region.

COLONIAL OFFICE.

19th January, 1923.