3, 1961

IN THE PRIVY COUNCIL No. 42 of 1958

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

RALLI ESTATES LIMITED Appellants

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

- 63632

FRESHFIELDS,
1, Bank Buildings,
Princes Street,
London, E.C.2.
Solicitors for the Appellants.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondents.

IN THE PRIVY COUNCIL No. 42 of 1958

ON APPEAL FROM THE COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

B E T W E E N : RALLI ESTATES LIMITED Appellants

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

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3.	Notice of Motion (and annexures thereto) applying for an extension of time to file Record of Appeal		
4.	Order of the Court of Appeal dated 21st June 1957 granting extension of time applied for in item 3 above		
5.	Application (and annexures thereto) for Conditional Leave to Appeal to Her Majesty in Council		
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IN THE PRIVY COUNCIL No. 42 of 1958

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

B E T W E E N

RALLI ESTATES LIMITED Appellants

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

In the High Court of Tanganyika.

No. 1.

No. 1.

NOTICE OF REFUSAL re ASSESSMENT NO. 13500

Notice of Refusal, re Assessment No. 13500.

15th July, 1955.

Registered Post

EAST AFRICAN INCOME TAX DEPARTMENT

Please quote:
File No. T. 2763
in any communication
regarding this form.

Form No. I.T. 23.

NOTICE OF REFUSAL

(Sections 77 and 78 of the East African (Management) Act, 1952)

Assessment No. 13500

INCOME TAX - YEAR OF INCOME 1952

Regional Commissioner of Income Tax,
Private Bag, Dar es Salaam.

15th July, 1955.

To:-

Ralli Estates Limited,
P.O. Box 409,
TANGA.

Sir,

With reference to your objection to the assessment made upon you for the Year of Income 1952 I hereby give you notice that I am not prepared to amend the assessment.

In the High Court of Tanganyika.

No. 1.

Notice of Refusal, re Assessment No. 13500.

15th July, 1955 - continued.

You are entitled -

(a) to appeal to the Local Committee on giving me notice in writing within 30 days of the date of this notice; or

(b) to appeal to a Judge on giving me notice in writing within 60 days of the date of this notice.

Such notice cannot be accepted after 30 days or 60 days as the case may be, unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to absence from the Protectorate, sickness or other reasonable cause. In the event of an appeal to a Judge, you are also required to present a Memorandum of Appeal to the Court within 60 days after service of this notice.

If no appeal is made the tax assessed, amounting to Shs. 2,482,555/- is payable on or before the 15th September, 1955 and if payment is not made by that date a penalty of 20 per cent will be added.

Will you kindly attach the remittance slip when making payment.

I am, Sir,
Your obedient Servant,

(Sgd.) P.M. Fowles.

p.p. REGIONAL COMMISSIONER OF INCOME TAX.

No. 2.

Memorandum of Appeal re Assessment No. 13500.

11th October, 1955.

No. 2.

MEMORANDUM OF APPEAL re ASSESSMENT NO. 13500

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPEAL NO. 19 of 1955

RALLI ESTATES LIMITED Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

MEMORANDUM OF APPEAL

The Appellant above-named, being aggrieved by

In the High Court of Tanganyika.

No. 2.

Memorandum of Appeal re Assessment No. 13500.

11th October, 1955 - continued.

Notice of Refusal dated 15/7/1955 issued on behalf of the Respondent in relation to Assessment No. 13500 for the Year of Income 1952 made upon the Appellant by the Respondent, appeals to this Honourable Court against the said Assessment on the following grounds:-

1. That the said assessment which purports to disallow as a deduction and consequently to charge the Appellant with tax in respect of an amount of £80,274 paid to the Government of the Trust Territory of Tanganyika, (hereinafter referred to as "the Government"), is wrong in principle, bad in law and not in accordance with the relevant statutory provisions in that :-

   (a) The said payment constituted outgoings and expenses wholly and exclusively incurred by the Appellant in the production of the Appellant's income for the Year of Income 1952, and should accordingly be allowed as a deduction for the purpose of ascertaining the Appellant's total income for 1952, under the provisions of Section 14 of the East African Income Tax (Management) Act, 1952;

   (b) In the alternative the said payment to Government was paid as a royalty in accordance with the particulars of certain Sisal Estates advertised on behalf of Government on various dates in 1950, and should accordingly as a revenue payment be allowed as a deduction from income as aforesaid.

   (c) In the alternative the said payment to Government was part of the value fixed by Government of the wasting stock-in-trade on the said Sisal Estates at 1st January, 1951, of Mature and Immature Sisal Plants for conversion into Sisal Fibre and Tow for sale, and should accordingly be allowed as a deduction from income as aforesaid

   (d) In the alternative the said payment to Government represented part of the cost to the Appellant Company of stock-in-trade of its business and should accordingly be allowed as a deduction from income as aforesaid.

   (e) In the alternative the said payment to Government, together with the sum of £155,761 also paid to Government was part of the

In the High Court of Tanganyika.

No. 2.

Memorandum of Appeal re Assessment No. 13500.

11th October, 1955 - continued.

value placed by Government on the mature and immature Sisal on the Mjesani and Lanconi Estates and adjacent land at the 1st January, 1951 and should be written-off in accordance with the election declared by the company under Section 29 of Part IV, Second Schedule to the East African Income Tax (Management) Act, 1952.

2. That the Respondent wrongfully refused to make a deduction from the said Assessment of the said sum of £80,274 or any part thereof, and has wrongfully refused to grant any relief in respect of the said sum.

3. Pursuant to Rule 5 of the Income Tax (Appeal to the Tanganyika High Court) Rules, 1955, the Appellant attaches:-

(a) A copy of the said Notice of Refusal marked Appendix 1.

(b) A Statement of Facts marked Appendix 2.

4. By letter Reference 92,101/1/28 dated 11th August, 1955, the Respondent has stated that the last date of appeal to this Court, as signified in the said Notice of Refusal, has been extended to 15th October, 1955.

WHEREFORE THE APPELLANT PRAYS that the said Assessment may be annulled or that such order may be made as to this Honourable Court seems meet, and for the costs of this Appeal.

DATED at Nairobi this 11th day of October, 1955.

(Sgd.) (K. BECHGAARD)

ADVOCATE FOR APPELLANT.

Filed by :-

No. 3.

APPELLANT'S STATEMENT OF FACTS AND APPENDIX "A" re ASSESSMENT NO.13500

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts and Appendix "A" re Assessment No. 13500.

11th October, 1955.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPEAL NO. OF 1955

RALLI ESTATES LIMITED Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

APPELLANT'S STATEMENT OF FACTS AND APPENDIX "A"

1. Ralli Estates Limited was incorporated in Tanganyika on 21st December, 1950, with a nominal capital of £500,000 of which £250,000 has been issued and all subscribed by Ralli Brothers Limited for the purposes hereinafter set out.

2. By the German Property (Disposal) Order 1948 certain sisal estates (including the Lanconi and Mjesani Sisal Estates together with an additional 6,000 hectares of undeveloped land adjacent thereto which are hereinafter referred to as the "Ralli Estates") were transferred to the Tanganyika Government as from 1st July, 1948, and thereupon the Tanganyika Government became the owner of the said estates.

3. From 1st July, 1948, Ralli Brothers Limited managed the said estates on behalf of the Custodian of Enemy Property in his capacity as agent for the Tanganyika Government under the Disposal Ordinance.

4. In June 1948 the Custodian prepared a memorandum on the disposal of Enemy Sisal Estates, and an extract from this memorandum is attached hereto as Document 1 in Appendix A. Early in 1950 the Tanganyika Government took steps to dispose of the enemy Estates acquired (including the Ralli Estates) and addressed a Memorandum to the Tanganyika Sisal Board in the terms set out in Document 2 in Appendix A.

5. On 17th March 1950 by public notice in the Press the Tanganyika Government invited applications for the allocation of ex-enemy Sisal Estates

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts and Appendix "A" re Assessment No. 13500.

11th October, 1955 - continued.

in Tanganyika Territory which included the Ralli Estates. A copy of the notice is included as Document 3 in Appendix A. The catalogue therein referred to was Land Settlement Pamphlet No.4 of 1950, which contained brief particulars of each of the Estates to be disposed of, and included a Foreword in the terms of Document 4 in Appendix A.

6. In August 1950 pursuant to a further public notice issued on behalf of the Government, Ralli Brothers Limited lodged an application for the Ralli Estates and with the knowledge and consent of Government undertook to form a subsidiary company to take and work the Ralli Estates on the terms offered by Government. This said Company was duly formed in accordance with the said undertaking and is Ralli Estates Limited, the Appellant Company in this case. The said application was acknowledged in a letter from the Member for Lands and Mines dated 30th September, 1950, a copy of which is attached as Document 5 in Appendix A. This said letter was the basis upon which Ralli Brothers Limited and Ralli Estates Limited accepted the Ralli Estates and paid the moneys to Government as hereinafter set out.

7. On 26th October, 1950, Ralli Brothers Limited were informed by the Department of Lands and Mines that they had been selected as the future tenant of the Ralli Estates. A copy of the said letter is attached as Document 6 in Appendix A.

8. In November 1950 Ralli Brothers Limited were informed that although the formal offer of a Right of Occupancy had not been made to them, 50% of the premium was payable within 21 days of allotment and the balance within 90 days as mentioned in paragraph 3 of the letter dated 30th September 1950, Ralli Brothers Limited thereupon paid a further £158,800 on 16th November, 1950, and in accordance with the agreement reached with the Government as hereinbefore set out Ralli Estates Limited was formed and Government thereafter made the Formal Offer to that company and treated the Appellant company thereafter as the original applicant. On 29th December, 1950, the Appellant company paid Shs. 49,445, being the first year's rent and fees for the preparation and registration of the title deeds of the Ralli Estates, and on 24th January, 1951, paid £126,800 the balance of the premium. On

15th February 1951 the Appellant company also paid Shs. 183,802 for Stamp Duty on the documents. The deposit of £31,700 and the first instalment of £158,500 previously paid by Ralli Brothers Limited were refunded to that company by Ralli Estates Limited and from December 1950 onwards all correspondence and negotiations with the Government were carried on by the Appellant company.

9. On 20th December 1950 formal offers of a Right of Occupancy were issued to the Appellant company in the form of a letter, a copy of which is attached as Document 7 of Appendix A. Subject to certain reservations, the Appellant company accepted the Right of Occupancy on the said terms on 31st December, 1950.

10. The total sums payable by the Appellant company were the same under each of the letters of 30th September, 1950 and 20th December, 1950, but in the former the amounts were expressed in Pounds Sterling, and in the latter in East African Shillings.

11. In accordance with the terms of the aforesaid documents the Appellant company paid the sum of £94,326 to Government in 1951 and the sum of £80,274 in 1952 and is entitled in law to a deduction of these amounts as being outgoings and expenses wholly and exclusively incurred in the production of its income.

12. A list of the documents and other evidence which the Appellant company proposes to adduce is annexed hereto and marked Appendix "A".

DATED at Nairobi this 11th day of October, 1955.

K. BECHGAARD

ADVOCATE FOR THE APPELLANT.

Filed by :-

K. Bechgaard,
Advocate,
Sunglora House,
Victoria Street,
NAIROBI.

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A".

(1) Extract from Memorandum by Custodian of Enemy Property in June 1948.

A P P E N D I X "A".

DOCUMENT 1.

"Method of Disposal:

In accordance with the principles of land alienation approved by the Secretary of State for the Colonies, freehold titles will be extinguished and enemy Estates will not be disposed of at Auction. Estates will be transferred to the Governor under the German Property (Disposal) Ordinance, and new long-term rights of occupancy granted by the Governor to approved persons, on appropriate conditions providing for the proper development of Estates. Particulars of the Estates should be advertised, not only locally in East Africa, but in the United Kingdom and elsewhere, for a period of not less than six months prior to the intended date of disposal.

Basis of Selections:

Assuming Estates to be disposed of to selected Applicants without Auction, the procedure will require great care, and due consideration given to existing lessees.

Constitution of Selection Committee:

Assuming that the sisal properties will be the subject of long-term rights of occupancy without Auction to selected persons, it is suggested that the Selection Committee should not comprise any representatives of the Sisal Industry, as in view of their personal interests, their position would be most invidious. Under the circumstances it is recommended that the Committee should be comprised of Government Personnel.

Valuation:

Valuations of properties will be required before the granting of long-term rights of occupancy. Rent will be payable under the rights of occupancy, presumably assessed on the unimproved value of the land. A premium will be fixed for the value of the unexhausted improvements. Consideration will have to be given to :-

1. Valuation of Sisal Areas.
2. Valuation of Machinery equipment.

A P P E N D I X "A".

DOCUMENT 2.

(2) Letter Government of Tanganyika to Tanganyika Sisal Board, 7th March. 1950.

"It is proposed to base the valuation of each Estate on its potential production. The Custodian can arrange for all relevant information.

It is proposed to advertise the Sisal Estates for disposal very shortly, and it would greatly facilitate the disposal of these Estates if your Board would agree to Mr. Lock's advising on the valuation of the individual Estates, and in particular on the assessment of the potential production."

A P P E N D I X "A".

DOCUMENT 3.

(3) Public Notice in Tanganyika Press, 17th March, 1950.

Disposal of Ex-Enemy Sisal Estates,
Tanganyika Territory,
East Africa.

"Applications are invited for the purchase of ex-German Enemy Sisal Estates in Tanganyika Territory, East Africa. Details of the Estates and the mode of disposal are contained in a Catalogue which persons interested may obtain from:-

The Land Settlement Office,
Dar-es-Salaam,
Tanganyika Territory.

OR

The East African Office,
Grand Buildings,
Trafalgar Square,
London, W.C.2.

for the sum of Shs. 10/- per copy.

There will also be available from the same Offices or from the Chief Surveyor, Dar-es-Salaam, a Territorial Map shewing the situation of each Estate, for the sum of Shs. 5/- per copy, and the Questionnaire Forms which each applicant is required to complete and submit with his application.

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(3) Public Notice in Tanganyika Press, 17th March, 1950 - continued.

Applications should be submitted to the Land Settlement Officer, Dar-es-Salaam, Tanganyika Territory, accompanied by a completed Questionnaire Form and all evidence to support the Application, not later than the 31st August, 1950.

Selection Committee will meet to interview applicants, or their Representatives, at Tanga and Dar-es-Salaam, Tanganyika Territory, as soon as possible after the 31st August 1950. The dates of such Meetings will be notified to interested persons as soon as they are fixed.

The Estates have not yet been valued, but premia, Royalties and Rentals payable will be available before the Selection Committee meets.

J.J. Real.
14th March 1950. Land Settlement Officer.

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(4) Foreword to Catalogue re disposal of ex-German Sisal Estates.

A P P E N D I X "A".

DOCUMENT 4.

FOREWORD

"General Intention: It has now been decided by Government to dispose of the former German owned Sisal Estates to selected persons on a long term leasehold basis. The main details regarding these Estates, which are available for disposal, are contained in the Catalogue appended hereto. It should be emphasised that the Estates are at present occupied by lessees from the Custodian of Enemy Property on a short term basis, and that entry to the estates under the long-term leases cannot be given until after the 31st day of December 1950, when the short term leases will expire.

"History of Short Term Leases: After the outbreak of War in 1939, the Tanganyika Sisal Growers Association was consulted by Government with regard to the leasing of the Enemy Owned Sisal Estates. The Association advised Government that in the circumstances, the main qualifications for lessees should be that they owned Sisal estates in proximity to the enemy owned properties; that they should be of good repute in the Industry; and that they should

possess a sufficiency of staff and labour to undertake the leases of the enemy estates. Estates were leased in the first instance for a period of one year, at more or less nominal rents: but Royalties were payable to the Custodian of Enemy Properties. These Royalties were based on a sliding scale according to the grades of sisal produced and sold. Subsequently, and from time to time, new leases were entered into upon terms and conditions that shewed considerable variation from those contained in the original leases. Eventually in 1943, leases were granted for a term of five years, which expired on the 31st December 1948: and since the last mentioned date, the leases have been extended for two further periods of one year which as indicated above, will expire on the 31st December 1950. These Leases contained provisions for the payment of a nominal rent and a Royalty that is assessed on production at current market prices. The leases also included inter alia, covenants for the maintenance by the lessees of the areas of mature sisal, of the buildings and equipment; and for payment by the Custodian, from Royalties received, of the cost of necessary capital improvements, e.g. buildings, machinery and replanting. These capital improvements have been, and are, effected in accordance with an annual programme, mutually agreed between the lessees and the Custodian.

Pursuant on these arrangements, most of the Royalties received have been "ploughed back" into the land, or expended on the purchase of machinery, and, to an even greater extent, utilised to give effect to a large building programme, covering mainly the provision of permanent housing for labour. In the result most of the Enemy Estates which had deteriorated considerably during the early years after the outbreak of the War, have recovered their pre-war potential, so far as production is concerned.

In this latter connection it should perhaps be explained that, as a result of the restriction on production brought into operation by Government in 1940, and continuing in operation until the end of 1941 many of the Enemy Estates were seriously affected, as the cutting of limited areas resulted in early polling in new areas, and prevented cleaning and de-suckering in other areas. Furthermore, up to the end of 1941, no replanting was done on

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(4) Foreword to Catalogue re disposal of ex-German Sisal Estates - continued.

any of the enemy sisal estates, as it would have been a waste of money to have embarked on any policy of replanting at that time, especially as on every Estate there was more leaf than could be handled under the quota. In 1942 plans were formulated for a regular rotational replanting programme, and the decisions taken then, and subsequently, have been bearing and should continue to bear fruit. Shortage of labour and other reasons however retarded progress, and it was not until 1945 that any considerable increase was effected in the new planted areas. From 1945 onwards however the planting programme has been considerably accelerated as a result of mechanical cultivation.

Catalogue: It will, doubtless, be appreciated that the details given in the Catalogue are not entirely comprehensive, and it must be emphasised that the accuracy of all the particulars and details supplied therein cannot be guaranteed. Thus, for example, the details of the buildings and machinery, are not entirely comprehensive but merely relate to the main items. Inventories of all the minor, as well as the major items are, however, being brought up to date, and will be available to prospective applicants. It should be added that the Custodian of Enemy Property will be able to furnish considerable detail on the planted areas, which, while it cannot be absolutely guaranteed, will furnish a useful indication as to the extent and age of the several planted areas on each estate. A territorial plan, showing the approximate location of the various Sisal Estates, in relation to road, rail and shipping, can be obtained upon application to The Chief Surveyor, Lands and Mines Department, Dar-es-Salaam, and upon payment of a fee of Shs.5/-, Sketch plans of the individual sisal estates are not available, but can be inspected at the Office of the Custodian of Enemy Property, in Arusha; or at the Branch Office of the Department in Tanga, so far as the Estates in the Tanga Province are concerned; or in the Branch Office at Dar-es-Salaam, so far as the Estates in the Eastern Province are concerned. Finally, intending purchasers are advised to verify the particulars and details furnished, or obtained, with regard to the particular Sisal Estate it is sought to purchase, by a personal inspection of the Estate. This inspection can be arranged in consultation with the Assistant Custodians at Tanga and Dar-es-Salaam or with the Custodian at Arusha.

Method of Disposal: All these Sisal Estates are now being advertised for sale in the United Kingdom, and in East Africa. Arrangements have been made for the valuation of the estates to be undertaken. Every applicant for the purchase of a sisal estate must submit, with his application, a duly completed questionnaire form, which can be obtained from the Land Settlement Officer, Department of Lands and Mines, Dar-es-Salaam. Applications should reach the said Officer, on or before the closing date for applications, as mentioned in the advertisement of Sale. The estates will be allocated to suitable applicants on the recommendations of a Selection Committee, which will be appointed by Government.

Condition of Sale: The conditions of sale will include the offer of a Right of Occupancy over each estate to the approved applicant, on the basis of a Right of Occupancy (or lease) for a term of 99 years, subject to payment of a premium, a royalty, and a rent, and to one exception, namely that the "Karanga" Estate will be offered for a term of 20 years only (cf. note appended at foot of relevant entry in Catalogue infra). The premium and royalty will be related to the value of the unexhausted improvements on the land, including leaf, building, machinery and equipment; and the rent will be based on the unimproved value. The premium will take the form of a cash payment; but the royalty will be payable over an indeterminate period, related to the estimated leaf potential on the estate, at the time of disposal. The land rent will be subject to periodical revision in accordance with the terms of the Land Ordinance; and the other conditions of the Right of Occupancy will also be governed by the said Ordinance, and the regulations thereunder".

APPENDIX "A"

DOCUMENT 5.

The Member for Lands & Mines,
The Secretariat,
Dar-es-Salaam,
Tanganyika Territory,

Ref.No.LS/3043/8.

30th September, 1950.

Gentlemen,

I am directed to refer to your application in

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(5) Letter Member for Lands and Mines to Ralli Brothers Limited,

30th September, 1950

- continued.

response to Government's advertisement regarding the disposal of the ex-enemy Sisal Estates, and to inform you that the Selection Committee which will interview applicants will assemble in Dar-es-Salaam on the 9th October and will commence its work immediately thereafter. The Secretary of the Committee will consult you in due course, regarding an interview with the Committee.

2. In the meantime, detailed information can now be supplied to applicants regarding the terms of disposal. As explained in the Catalogue, the estates will be disposed of on long agricultural leases of 99 years, except where otherwise stated. A yearly rental of Shs. 2/- per acre will be charged. Payment of a premium and a royalty will be required in all but those estates where the capital value is small, in which cases the full value will be payable as premium.

3. The premium will be payable as follows :-

10% at the time of allotment, to be forfeited if the purchase is not completed.
30% within 21 days of allotment.
Balance within 90 days.

4. Royalty will be charged on a sliding scale, based on the average f.o.b. price of line fibre, at the rates shown in the attached table of royalties. Royalties will be payable until, in the case of each estate, the whole balance due by way of royalty has been extinguished, or until royalty has been paid on the tonnage liable to royalty, whichever occurs the earlier.

5. The following are the details regarding the estates for which you are an applicant:-

Estate	Catalogue Reference No.	Total Net Capital Value	Premium Payable	Balance due on Royalty	Fibre Tonnage on which Royalty Payable Tons.
		£	£	£	
Lanconi	T1512	191500	121200	70300	7809
Mjesani	T1513	294100	189800	104300	11588
Kilulu	T1514	134700	83800	49900	6153

Other particulars or notes: The above valuation figure for Lanconi Estate is only for the area under sisal. The successful applicant will be offered an additional 6,000 hectares at a premium of £1 per hectare and an annual rental of Shs.2/- per acre.

Please sign the attached acknowledgment and return at your earliest convenience.

I am, Gentlemen,

Your obedient servant,

Sgd.

MEMBER FOR LANDS & MINES.

TABLE OF ROYALTIES

Price of Sisal per ton f.o.b.	Royalty per ton
£70 - or under	£ 1. 0. 0
£71 - £75	£ 3.15. 0
£76 - £80	£ 5.19. 0
£81 - £85	£ 8. 3. 0
£86 - £90	£ 10.10. 0
£91 - £96	£ 12.17. 0
£96 - £100	£ 15. 7. 0
£101 - £105	£ 18. 4. 0
£106 - £110	£ 21. 5. 0
£111 - £115	£ 24. 9. 0
£116 - £120	£ 27.16. 0
£121 - £125	£ 31. 6. 0
£126 - £130	£ 34.19. 0
£131 - £135	£ 39. 7. 0
£136 - £140	£ 43.19. 0
£141 - £145	£ 48.16. 0
£146 - or over	£ 56.18. 0

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(6) Letter Department of Lands and Mines to Ralli Brothers Limited,

26th October, 1950.

A P P E N D I X "A".

DOCUMENT 6.

Department of Lands & Mines,
Dar-es-Salaam,
Tanganyika Territory.

Ref: No.LS/3006/6/13 26th October, 1950.

Messrs. Ralli Brothers Limited,
P.O. Box 92,
DAR-ES-SALAAM.

Gentlemen,

1. I am directed to refer to my letter No. 18/4043/8 of the 30th September 1950 regarding your application in connection with the disposal of ex-enemy sisal estates, and to inform you that, on the advice of the Selection Committee, you have been selected as the future tenant of the following estates :-

Lanconi	-	T 1512
Mjesani	-	T 1513

2. Your application in respect of the other estate for which you applied has, however, been unsuccessful.

3. In accordance with the conditions of sale as set out in paragraph 3 of my letter under reference, I shall be grateful to receive your remittance representing 10% of the premium after which a formal offer of a Right of Occupancy will be addressed to you as soon as possible. The term of years in the Right of Occupancy will date from 1st January 1951".

I am, Gentlemen,

Your obedient servant,

Sgd.

MEMBER FOR LANDS AND MINES.

Note: Payment of the 10% referred to in paragraph 3 above may be made to the Crown Agents for the Colonies, 4, Millbank, London, S.W.1. under advice to me of the date of payment.

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(7) Letter Department of Lands and Mines to Ralli Estates Limited

20th December, 1950.

A P P E N D I X "A".

DOCUMENT 7.

Department of Lands and Mines,
Dar-es-Salaam,
Tanganyika Territory.

20th December, 1950.

Offer of a Right of Occupancy.
The Land Ordinance (Cap. ~~115~~ 113 of the Laws).

"To Ralli Estates Limited,
P.O. Box 172,
TANGA.

Property: All that piece or parcel of land known as Lanconi and Mjesani situate in the District of Tanga formerly held under L.P. Lots 334A (Part) and 210 comprising in the whole 23,469 acres or thereabouts.

Your application in respect of the above mentioned property has been approved and I am directed by His Excellency the Governor to offer you a Right of Occupancy over the said land subject to the terms and conditions herein contained and to the Special Conditions annexed hereto.

2. This offer is subject to the said land referred to being found available on survey, the final demarcation of the boundaries being determined by Government.

If you accept this offer payment of the full purchase monies amounting to Shs. 9,832,000/- of which Shs. 8,992,920/- shall be deemed to be in respect of the said land, buildings, immovable machinery, fixtures and effects and Shs.839,080/- shall be in respect of movable machinery, chattels, vehicles, and other effects capable of manual delivery and purchased by you, together with the first year's rent, fees for preparation and registration of title deeds, stamp duty and survey fees, when demanded, shall be made in the manner following :-

(i) As to Shs.6,340,000/- thereof payable as a premium as follows :-

(a) 10% thereof amounting to Shs. 654,000/-

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(7) Letter Department of Lands and Mines to Ralli Estates Limited

20th December, 1950
- continued.

already paid on allotment, receipt whereof is hereby acknowledged.

(b) 50% thereof amounting to Shs.3,170,000/- already paid, receipt whereof is hereby acknowledged.

(c) 40% thereof amounting to Shs.2,536,000/- due and payable on the 24th day of January, 1951.

(ii) The balance of such purchase monies, amounting to Shs.3,492,000/- shall be paid by monthly instalments. A notice informing you of the amount of such instalment will be sent on or before the 15th day of each month. The first of such payment shall become due and payable on the 15th day of February, 1951, and thereafter on the 15th day of each and every subsequent month, and shall be paid on or before the last day of each month. The amount of such monthly payments shall be assessed by reference to the tonnage of line sisal fibre produced on the said land and exported during the month preceding the dispatch of the notice hereinbefore mentioned. The tonnage exported shall be assessed by reference to the return made under the Sisal Industry Registration Rules, 1946. Provided always that the Governor shall have option, to be exercised at his sole discretion, to assess the said tonnage by reference to the tonnage of lone sisal fibre produced on the said land by reference to the monthly returns submitted by you, under the Sisal Industry Registration Rules, 1946. Such monthly payments shall be calculated on a sliding scale determined by the average of the monthly sales of all grades of line sisal fibre exported FOB from Tanga and Dar-es-Salaam as set out in the return submitted by the Commissioner of Customs for the East African Territories to the Governor at the rate provided for in the Schedule hereto. The said monthly instalments shall be paid until such time as either the said balance of the purchase monies is paid or until the total fibre tonnage of 19,397 tons shall have been cut and accounted for, whichever shall first occur. The occupier agrees to pay interest at the rate of 5% per annum

on each and every monthly instalment remaining unpaid after the last day of each and every month, as aforesaid, until the date of payment and to accept as final the figures of the monthly instalment as shown in the said notice.

(iii) Forthwith upon acceptance:-

(a) One Year's Rent amounting to Shs.47,000/-.

(b) Fees payable for the preparation and Registration of title deeds amounting to Shs. 2,445/-.

(c) Stamp Duty amounting to Shs.180,802/-.

(iv) Within seven days of demand:-

Survey Fees.

(v) If you accept this offer the balance of the payments on account of the premium hereinbefore mentioned, together with the balance of purchase monies payable by monthly instalments in accordance with the Schedule hereto, may be paid at your option either to the Crown Agents for the Colonies, 4, Millbank, London, S.W.1. under advice to me of the date of payment, or direct to me at the Land Office, Dar-es-Salaam.

(vi) This offer must be accepted by the 31st December, 1950, after which date it ceases to be valid.

Should there be any default in making such payments or any of them this agreement for sale of a Right of Occupancy may be forthwith annulled or revoked, in which event you will not be entitled to any refund of any sum already paid by you under this condition.

SCHEDULE

Rates at which Balance of Purchase Monies to be Calculated.

Average FOB Price of Line Sisal Fibre	Amount Payable per ton
£ 70 - or under	£ 1. 0. 0
71 - £ 75	3.13. 0
76 - 80	6.19. 0

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(7) Letter Department of Lands and Mines to Ralli Estates Limited, 20th December, 1950 - continued.

SCHEDULE (Contd.)

Average FOB Price of Line Sisal Fibre	Amount Payable per ton
£ 81 - £ 85	£ 8. 3. 0
86 - 90	10.10. 0
91 - 95	12.17. 0
96 - 100	15. 7. 0
101 - 105	18. 4. 0
106 - 110	21. 5. 0
111 - 115	24. 9. 0
116 - 120	27.16. 0
121 - 125	31. 6. 0
126 - 130	34.19. 0
131 - 135	39. 7. 0
136 - 140	43.19. 0
141 - 145	48.16. 0
146 or over	56.18. 0

Special Conditions

1. Term: 99 years commencing from the 1st January 1951.

2. The rent shall be payable yearly in advance and shall be subject to revision by the Governor after the expiration of twenty years from the date of commencement of this Right of Occupancy and shall be subject to revision or further revision after the expiration of every subsequent period of twenty years throughout the Right of Occupancy or any extension or renewal thereof provided that such revision may take place within five years after the above-mentioned dates.

3. The said land shall be used solely for agricultural purposes and for purposes ancillary thereto.

4. The Occupier shall pay within seven days of the receipt of the demand for the same, the survey fees, and any balance due in respect of stamp duty and fees for the preparation and registration of title deeds. Failure to pay such amounts within the prescribed period will be held to constitute good cause for the revocation of this Right of Occupancy within the meaning of Section 10 of the Land Ordinance (Cap. 115 of the Laws).

5. The Right of Occupancy is subject to the provisions of the Land Ordinance (Cap.115 of the Laws) and the Land Regulations 1948 save that the operation of the following sections of the Regulations

is expressly excluded 6 (1) (a), 6 (2) (3) and (f), 6 (3) and 6 (4).

6. The Occupier hereby covenants :-

(a) to clear the said land of all tsetse bush within a period of five years from the date of commencement of the Right of Occupancy and thereafter to keep the said land clear of all tsetse bush throughout the term of the Right of Occupancy.

(b) to make adequate arrangements to the satisfaction of the District Commissioner, Tanga, for drainage and disposal of waste products and effluent from any factory or factories which are now or may hereafter be erected on the said land.

(c) to permit no fouling of the water in any river within or outside boundaries of the said land to occur as the result of any operations thereon.

(d) to take all measures which may be necessary for the protection of the soil fertility and for the prevention of soil erosion on the said land and to cultivate the said land in such manner as not to cause soil erosion outside its boundaries as aforesaid and further to take any measures which may be required by the Director of Agriculture to achieve such objects.

(e) to make adequate arrangements for the housing of labour employed on the said land to the satisfaction of the Labour Commissioner and to comply with such instructions as may from time to time be issued by the said Labour Commissioner relating to the provision maintenance and improvement of such housing.

7. No sub-division of the said land will be permitted.

8. No transfer or sub-lease of the said land or any part thereof during the first five years of the term hereby granted shall be approved by the Governor except in exceptional circumstances of which the Governor shall be the sole Judge. The occupation or working of the said land or any part thereof by any person other than the occupiers or their employees or contractors (as such) shall be deemed to be sub-letting for the purposes of this condition.

In the High Court of Tanganyika.

No. 3.

Appellant's Statement of Facts with Appendix "A"

(7) Letter Department of Lands and Mines to Ralli Estates Limited, 20th December, 1950 - continued.

9. This Right of Occupancy shall confer no water rights.

10. The said land is believed and shall be taken to be herein correctly described. No error omission or misdescription of the said land shall invalidate this Agreement nor be the subject of compensation by either party.

11. Excision for Roads: There are excepted and reserved out of this Right of Occupancy :-

(a) All existing bridges roads and highways in public use crossing the said land.

(b) Any existing road gang camps used in connection with the surveying, construction or maintenance of such roads and highways.

12. Failure to comply with any of the terms and conditions herein contained will be deemed to constitute good cause for revocation of this Right of Occupancy.

DATED 20th December 1950.

(Signed) J. Kennedy,
Ag. Land Officer.

Ralli Estates Limited hereby accept a Right of Occupancy over the said Land referred to in the foregoing Offer and in the special Conditions annexed hereto.

DATED this 31st day of December 1950.

THE COMMON SEAL of RALLI ESTATES LIMITED was hereunto affixed in the presence of :-

COMMON SEAL of RALLI ESTATES LIMITED.

M.A. Carson
G.C. Priest

Directors.

No. 4.

STATEMENT OF FACTS OF COMMISSIONER OF INCOME TAX RE ASSESSMENT NO. 13500.

In the High Court of Tanganyika.

No. 4.

Statement of Facts of Commissioner of Income Tax re Assessment No. 13500.

16th May, 1956.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPEAL NO. 19 of 1955

RALLI ESTATES LIMITED Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

STATEMENT OF FACTS OF COMMISSIONER OF INCOME TAX

The Appellant appeals against Assessment No. 13500 for the year of income 1952 in so far as the sum of £80,274 paid by the Appellant to the Government of Tanganyika has not been allowed as a deduction in computing the income of the Appellant for the said year of income 1952.

2. The Appellant purchased from the Government of Tanganyika a group of estates, referred to in the Statement of Facts of the Appellant and in this Statement of Facts as the Ralli Estates, with effect from the 1st January, 1951, under an offer of a Right of Occupancy set out as Document 7 of Appendix A of the Appellant's Statement of Facts.

3. The purchase price of the said Ralli Estates was the sum of £491,600 of which £449,646 was related to immovable property and £41,954 to moveable property. The said division of the purchase price was made for the purpose of assessing stamp duty.

4. The said purchase price was determined by the Government of Tanganyika on the basis of the estimated profit, capitalised over a period, on the optimum annual output of line fibre, from which estimated profit was deducted the estimated cost of bringing the production of the estates to its optimum level of output. The Ralli Estates had previously been ex-enemy estates and the same basis was utilised in arriving at the purchase price of all such estates.

5. In the case of the sale of large ex-enemy

In the High Court of Tanganyika.

No. 4.

Statement of Facts of Commissioner of Income Tax re Assessment No. 13500.

16th May, 1956 - continued.

estates, of which the Ralli Estates was one, it was considered preferable by the Government of Tanganyika not to demand payment of the whole purchase price outright and thus it was decided to divide the purchase price into two parts. The first part was to be payable at or about the time of the purchase in three instalments spread over a period of about 90 days. The second part was to be payable by monthly instalments starting on the 15th of the month following the first month of the purchase and computed by reference to fibre produced during each preceding month. Having regard to the basis on which the purchase price was arrived at, and in order to avoid possible over-capitalisation should the price of sisal fall appreciably, a formula was provided which, in the event of an appreciable fall in the price of sisal, would reduce the amount of the purchase price by limiting the instalments to payments on a specified tonnage of fibre.

6. The first part of the said purchase price was referred to in the documents annexed to the Appellant's Statement of Facts as the premium. The second part of the said purchase price was, in certain documents, referred to as royalty but as appears from Document 5 of Appendix A to the Appellant's Statement of Facts, was clearly stated to be the remaining part of the purchase price. The said second part of the purchase price is referred to as the balance of purchase moneys in Document 7 of Appendix A to the Appellant's Statement of Facts.

7. In accordance with the general position set out in paragraphs 4, 5 and 6 above, the said purchase price £491,600 was divided into £317,000 premium (which said amount was paid in three instalments at or about the time of the purchase) and £174,600, the balance of the purchase price which said amount was paid as to £94,326 by monthly instalments in 1951 and as to £80,274 by monthly instalments in 1952. It is this said amount of £80,274 which the Appellant is seeking in this appeal to have allowed as a deduction in computing the income of the Appellant for the said year of income 1952.

8. The said sale never took place on the basis that part of the purchase price related to capital assets and part to stock in trade with the mature and immature sisal plants being regarded as stock in trade.

No. 4.

Statement of Facts of Commissioner of Income Tax re Assessment No. 13500.

16th May, 1956 - continued.

9. As at 31st December, 1950, that is the day before the purchase of the Ralli Estates took effect, the expenditure incurred on the said estates on clearing and planting with semi-permanent crops was £155,761. The Appellant elected under paragraph 29 of the Second Schedule to the East African Income Tax (Management) Act, 1952, that such expenditure and any similar expenditure shall be deducted in accordance with the provisions of paragraph 30 of the said Second Schedule and this has accordingly been done.

DATED this 16th day of May, 1956.

(Sgd.) C.D. NEWBOLD,
LEGAL SECRETARY,
EAST AFRICA HIGH COMMISSION
(Advocate for the Respondent)

Filed by:-
C.D. NEWBOLD,
The Legal Secretary,
East Africa High Commission,
Barclays Bank Building,
P.O. Box 601,
Nairobi.

FILED this 22nd day of June, 1956.

(Sgd.) V. CONTRACTOR,
Court Clerk.

No. 5.

Notice of Refusal re Assessment No. 28435.

15th July, 1955.

No. 5.

NOTICE OF REFUSAL RE ASSESSMENT NO. 28435.

Registered Post

EAST AFRICAN INCOME TAX DEPARTMENT

Please quote:
File No. T.2763
in any communication
regarding this form.

Form No. I.T. 23.

NOTICE OF REFUSAL

(Sections 77 and 78 of the East African (Management) Act, 1952)

Assessment No.28435

INCOME TAX - YEAR OF INCOME 1951

In the High Court of Tanganyika.

No. 5.

Notice of Refusal re Assessment No. 28435.

15th July, 1955 - continued.

Regional Commissioner of Income Tax,
Private Bag,
Dar-es-Salaam.

15th July, 1955.

To:-

Ralli Estates Ltd.,
P.O. Box 409,
TANGA.

Sir,

With reference to your objection to the assessment made upon you for the Year of Income 1951 I hereby give you notice that I am not prepared to amend the assessment.

You are entitled -

(a) to appeal to the Local Committee on giving me notice in writing within 30 days of the date of this notice; or

(b) to appeal to a Judge on giving me notice in writing within 60 days of the date of this notice.

Such notice cannot be accepted after 30 days or 60 days as the case may be, unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to absence from the Protectorate, sickness, or other reasonable cause. In the event of an appeal to a Judge, you are also required to present a Memorandum of Appeal to the Court within 60 days after service of this notice.

If no appeal is made the tax assessed, amounting to Shs.1,148,460/- is payable on or before the 15th September, 1955 and if payment is not made by that date a penalty of 20 per cent will be added.

Will you kindly attach the remittance slip when making payment.

I am, Sir,

Your obedient Servant,

(Sgd.) P.M. FOWLES.

p.p. REGIONAL COMMISSIONER OF INCOME TAX.

In the High Court of Tanganyika.

No. 6.

Memorandum of Appeal re Assessment No. 28435.

11th October, 1955.

No. 6.

MEMORANDUM OF APPEAL RE ASSESSMENT NO. 28435

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPEAL NO. 20 of 1955

RALLI ESTATES LIMITED — Appellant

versus

THE COMMISSIONER OF INCOME TAX — Respondent

MEMORANDUM OF APPEAL

The Appellant above-named, being aggrieved by Notice of Refusal dated 15/7/1955 issued on behalf of the Respondent in relation to Assessment No. 28435 for the Year of Income 1951 made upon the Appellant by the Respondent, appeals to this Honourable Court against the said Assessment on the following grounds:-

1. That said assessment which purports to disallow as a deduction and consequently to charge the Appellant with tax in respect of an amount of £94,326 paid to the Government of the Trust Territory of Tanganyika, (hereinafter referred to as "the Government"), is wrong in principle, bad in law and not in accordance with the relevant statutory provisions in that:-

   (a) The said payment constituted outgoings and expenses wholly and exclusively incurred by the Appellant in the production of the Appellant's income for the Year of Income 1951, and should accordingly be allowed as a deduction for the purpose of ascertaining the Appellant's total income for 1951, under the provisions of Section 14 of the East African Income Tax (Management) Act, 1952;

   (b) In the alternative the said payment to Government was paid as a royalty in accordance with the particulars of certain Sisal Estates advertised on behalf of Government on various dates in 1950, and should accordingly as a revenue payment

In the High Court of Tanganyika.

No. 6.

Memorandum of Appeal re Assessment No. 28435.

11th October, 1955 - continued.

be allowed as a deduction from income as aforesaid.

(c) In the alternative the said payment to Government was part of the value fixed by Government of the wasting stock-in-trade on the said Sisal Estates at 1st January, 1951, of Mature and Immature Sisal Plants for conversion into Sisal Fibre and Tow for sale, and should accordingly be allowed as a deduction from income as aforesaid.

(d) In the alternative the said payment to Government represented part of the cost to the Appellant Company of stock-in-trade of its business and should accordingly be allowed as a deduction from income as aforesaid.

(e) In the alternative the said payment to Government, together with the sum of £155,761 also paid to Government was part of the value placed by Government on the mature and immature Sisal on the Mjesani and Lanconi Estates and adjacent land at 1st January, 1951 and should be written-off in accordance with the election declared by the Company under Section 29 of Part IV, Second Schedule to the East African Income Tax (Management) Act, 1952.

2. That the Respondent wrongfully refused to make a deduction from the said Assessment of the said sum of £94,326 or any part thereof, and has wrongfully refused to grant any relief in respect of the said sum.

3. Pursuant to Rule 5 of the Income Tax (Appeal to the Tanganyika High Court) Rules, 1955, the Appellant attaches:-

(a) A copy of the said Notice of Refusal marked Appendix 1.

(b) A Statement of Facts marked Appendix 2.

4. By letter Reference 92,101/1/28 dated 11th August, 1955, the Respondent has stated that the last date of appeal to this Court, as

signified in the said Notice of Refusal, has been extended to 15th October, 1955.

WHEREFORE THE APPELLANT PRAYS that the said Assessment may be annulled or that such order may be made as to this Honourable Court seems meet, and for the costs of this Appeal.

DATED at Nairobi this 11th day of October, 1955.

(Sgd.) K. BECHGAARD,

ADVOCATE FOR APPELLANT.

Filed by:-

In the High Court of Tanganyika.

No. 6.

Memorandum of Appeal re Assessment No. 28435.

11th October, 1955 - continued.

No. 7.

APPELLANT'S STATEMENT OF FACTS AND APPENDIX "A" RE ASSESSMENT NO. 28435

(The same as Document No. 3)

No. 7.

Appellant's Statement of Facts and Appendix "A" re Assessment No. 28435.

11th October, 1955.

No. 8.

STATEMENT OF FACTS OF COMMISSIONER OF INCOME TAX RE ASSESSMENT NO. 28435

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPEAL NO.20 of 1955

RALLI ESTATES LIMITED Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

STATEMENT OF FACTS OF COMMISSIONER OF INCOME TAX

The Appellant appeals against Assessment No. 28435 for the year of Income 1951 in so far as the sum of £94,326 paid by the Appellant to the Government of Tanganyika has not been allowed as a deduction in computing the income of the Appellant for the said year of Income 1951.

No. 8.

Statement of Facts of Commissioner of Income Tax re Assessment No. 28435.

16th May, 1956.

In the High Court of Tanganyika.

No. 8.

Statement of Facts of Commissioner of Income Tax re Assessment No. 28435.

16th May, 1956 - continued.

2. The Appellant purchased from the Government of Tanganyika a group of estates, referred to in the Statement of Facts of the Appellant and in this Statement of Facts as the Ralli Estates, with effect from the 1st January, 1951, under an offer of a Right of Occupancy set out as Document 7 of Appendix A of the Appellant's Statement of Facts.

3. The purchase price of the said Ralli Estates was the sum of £491,600 of which £449,646 was related to immoveable property and £41,954 to moveable property. The said division of the purchase price was made for the purpose of assessing stamp duty.

4. The said purchase price was determined by the Government of Tanganyika on the basis of the estimated profit, capitalised over a period, on the optimum annual output of line fibre, from which estimated profit was deducted the estimated cost of bringing the production of the estates to its optimum level of output. The Ralli Estates had previously been ex-enemy estates and the same basis was utilised in arriving at the purchase price of all such estates.

5. In the case of the sale of large ex-enemy estates, of which the Ralli Estates was one, it was considered preferable by the Government of Tanganyika not to demand payment of the whole purchase price outright and thus it was decided to divide the purchase price into two parts. The first part was to be payable at or about the time of the purchase in three instalments spread over a period of about 90 days. The second part was to be payable by monthly instalments starting on the 15th of the month following the first month of the purchase, computed by reference to fibre produced during each preceding month. Having regard to the basis on which the purchase price was arrived at, and in order to avoid possible over-capitalisation should the price of sisal fall appreciably, a formula was provided which, in the event of an appreciable fall in the price of sisal, would reduce the amount of the purchase price by limiting the instalments to payments on a specified tonnage of fibre.

6. The first part of the said purchase price was referred to in the documents annexed to the Appellant's Statement of Facts as the premium. The

second part of the said purchase price was, in certain documents, referred to as royalty but as appears from Document 5 of Appendix A to the Appellant's Statement of Facts, was clearly stated to be the remaining part of the purchase price. The said second part of the purchase price is referred to as the balance of purchase moneys in Document 7 of Appendix A to the Appellant's Statement of Facts.

7. In accordance with the general position set out in paragraphs 4, 5 and 6 above, the said purchase price £491,600 was divided into £317,000 premium (which said amount was paid in three instalments at or about the time of the purchase) and £174,600, the balance of the purchase price which said amount was paid as to £94,326 by monthly instalments in 1951 and as to £80,274 by monthly instalments in 1952. It is this said amount of £94,326 which the Appellart is seeking in this appeal to have allowed as a deduction in computing the income of the Appellant for the said year of Income 1951.

8. The said sale never took place on the basis that part of the purchase price related to capital assets and part to stock in trade with the mature and immature sisal plants being regarded as stock in trade.

9. As at 31st December, 1950, that is the day before the purchase of the Ralli Estates took effect, the expenditure incurred on the said Estates on clearing and planting with semi-permanent crops was £155,761. The Appellant elected under paragraph 29 of the Second Schedule to the East African Income Tax (Management) Act, 1952, that such expenditure and any similar expenditure shall be deducted in accordance with the provisions of paragraph 30 of the said Second Schedule and this has accordingly been done.

DATED at Nairobi this 16th day of May, 1956.

(Sgd.) C.D. NEWBOLD,
LEGAL SECRETARY,
EAST AFRICA HIGH COMMISSION,
(Advocate for the Respondent).

In the High Court of Tanganyika.

No. 8.

Statement of Facts of Commissioner of Income Tax re Assessment No. 28435.

16th May, 1956 - continued.

Filed by :-

C.D. NEWBOLD,
The Legal Secretary,
E.A. High Commission,
Barclays Bank Building,
Queensway,
P.O. Box 601,
Nairobi.

Filed this 22nd day of June, 1956.

(Sgd.) V. CONTRACTOR,
COURT CLERK.

10

No. 9.

Notes of Mr. Justice Crawshaw.

10th to 12th December, 1956.

No. 9.

NOTES OF MR. JUSTICE CRAWSHAW

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR-ES-SALAAM.

MISCELLANEOUS CIVIL APPEAL NO. 19 of 1955

RALLI ESTATES LIMITED Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

20

10.12.56. Borneman with Bechgaard for Appellant Co.
Newbold with Samuel for Respondent
Appeals Nos. 19 and 20 consolidated.

Borneman: The position in both appeals are identical.

I.T. is tax on income - i.e. on profits in trade, not the gross income.

U.K. Act is worded differently from E.A. Act, but it has been held here that effect is similar.

30

Refers s. 14. E.A.I.T. (M) Ord.
" s. 15 (c) "

Quadre whether expenses concerned were incurred in cause of carrying on sisal business e.g. money paid for user of assets - e.g. for use of machinery; this is not capital. Royalty is user of rights.

Submits instant case the money was paid for user. Test is whether according to ordinary principles of commercial accounting money would be capital payment or not. 2nd principle is, whatever words are and describe transaction, test is what was meant - what in fact money was paid for; Court must enquire into this.

I.T. Act is a commercial Act, and Court should not allow a mere playing with words by Crown.

Instant transaction :-

(a) represented value of unexhausted improvements.

(b) Royalty on amount of sisal produced and price.

Premium is capital charge and is not asked for as deduction.

Royalty is an income, and the whole of the sums claimed is royalty.

(c) Rent. This is of course allowable.

The sums involved were at first referred to as royalty, and it was only after certain payments of premium had been made that phrase "purchase money" used. But consideration was the same throughout and still geared to revenue of royalty. By altering the wording, the position is not altered, and Court must go behind them.

Question is, what in fact were monies paid for? Submits changeable to revenue, whether called royalty or otherwise.

Puts in agreed bundle of documents.

Ralli Bros. earlier managed the properties for C.E.P.

Refers f.2. Freehold to go. Right of Occ. and premium for unexhausted improvements. This doc. was 1948.

f.3. Government tell Sisal Board the basis of disposal.

f.4. Public notice for offers. Selection Centre will decide. Payments will include Royalty.

f.5. Foreword to catalogue prepared by Lands & Mines Department. Shows that Royalties were long accepted practice.

In the High Court of Tanganyika.

No. 9.

Notes of Mr. Justice Crawshaw.

10th to 12th December, 1956 - continued.

7. Royalty is here geared to user of a right and comes under revenue head.

Appts. Offer was based on published conditions.

p.17 - Most vital document. Appts. claim is based on this letter which determines nature of payments. Figures shown at part of page have never changed.

18. - £6,000 premium paid not claimed as rent as position not sufficiently certain. Refunded as capital payment. It has all characteristics of revenue payment. It varies according to price of sisal. It rises and falls with changes of the business. Whereas premium has to be paid, royalty need not - i.e. if no sisal produced, tho' then perhaps other penalties might be incurred. The of royalties has never subsequently changed.

19. - Letter is geared to Document 5 and refers to it, and follows Appts. application to Centre; M. Carson, chairman of Appellant co. appeared before Centre.

Letter is acceptance on stated terms and even demand for payment on those terms. Payment was made thereupon, and before issue of next document.

This letter and the 1st payment really ended the matter. In the 50% was paid, also on terms of earlier letter. At this stage any way royalty charging revenue.

20. An astonishing document. Service to labels. Whatever ends used, , same as in letter of 30th September, same payments etc. etc.

Only difference is use of words "balance of purchase price" for "royalty". Matter of words only.

Figures on p.20 are same as at part of p.17. Only difference is additional breakdown of total figure into immoveable and moveable property.

22. Royalty the same as p.18.

25. Date 1954 is merely due to delays such as survey.

28. Letters do not affect issue. In cause of growing pains under new system.

Quantity of "royalty" or "monthly payments" (whichever one likes to call it) is dependent on 2 imponderable factors - amount of sisal produced and market price. If price dropped sufficiently, uneconomic to produce and no sisal and no royalty. In fact prices and whole paid off in 2 years.

On 31st December 1950 there was no on estates, any mature and immature plants.

37. "Royalty payment".

"Premium 317, on capitalised in normal accounting manner".

40. "Royalty paid".

41. " - "

Accounts treat Royalty as revenue item and is in accordance with normal accounting practise.

Transacted

Grant of Right of Occupancy over public lands deemed

Sale of unexhausted improvements on land included in Right of Occupancy for premium representing value of improvements on land to incoming

Royalty on production of incalculable tonnage of fibre subject to royalty ceasing if royalty payments aggregate 19,174.

The £174,600 is allowable under s.14 as expense wholly and exclusively incurred. Comparable to rent, not capital.

These are any of 4 grounds of appeals, but rules on 1 (a), (b) and in alternative only (d).

(a) and (b) are combined.

(a) and (b):- (i) sums are truly royalties.

(ii) May monthly payments are made for right of potential of land which trader did not hold.

Precised comparable to payments for user of machinery etc.

(iii) Even if payments were purchase money, they were still income nature.

(iv) Monthly payments were such as, in accordance with commercial practice revenue payments.

In the High Court of Tanganyika.

No. 9.

Notes of Mr. Justice Crawshaw.

10th to 12th December, 1956 - continued.

Authorities.

It must at all crics, to see what payment really is.

Periodical payments for user of assets is revenue expenditure.

Refers Reports of Tax Cases 1913 - 21 p.310, Wm. J. Jones v. Commissioner of Income Revenue.

(1920) 11 LB. 711.

"Further Royalty is to royalty in instant case.

Adjourned to 2 p.m.

Refers No. 22 on list. New agreement drawn to improve their tax position.

Refers jointly to the following cases:-

Ramsey No. 10. p. 92/3.

98 2nd para.

Bechgaard: No. 13. p. 133 "real substance of transaction".

Hogarth: No. 19 Appears to be contradictory to Ledgard, but shows that principle is for Court to go intc circumstances of early case and decide nature of transaction.

Bottom 498

499 Royalty instant case became payable month by month as in Hogarth.

Ledgard and Ramsey referred to. Bottom p.502, Crown is seeking to put different interpretation in instant agreement to what parties did.

Refers No.3 Rustproof Metal Windows. Result of case does not matter, only firm - not facts.

p.456 ref. In instant case the user is user of growing crop only. Appellant has only a Right of Occupancy or right to enter and occupy, not a title to the land.

p. 459/60

The following cases illustrate that if sum is paid for Right of user almost insistably it will be income.

Constantinesco. No. 5 - Court of Appeal not House of Lords.

p.739. Instant case, property in land remained in Government. The user was for use of the land - sisal potential.

Desanther Bros.Ltd. Nethersale — No. 4 User indicates revenue.

No. 2 Facts not important Principle of 'user'.

Stanton: — No.13 User by reference to quality and price.

May whether royalty or not the sum claimed is of reversed nature as illustrated by following cases:-

Mackintosh — No.18 Not "a purchase by instalments", nor was Inst. case. Very similar. User went on though payments stopped.

Ogden — 26.

11.12.56. Court as before.

Ogden: No.26 Final para. Look to substance of transaction - does not matter what it is called.

No. 6 Premium and Royalty.

3rd para.

Property may be <u>sold</u> part in sum and part in royalty.

p.40.

Court can look outside contract for one purpose only and that is to see what the transaction really is.

Racecourse Betting Control Board. — No.27 p.186

187 - 2 para.

188 - ".... can you spell out ....."

<u>Alternatively</u>, and only in the alternative if transaction held to be a sale of growing crop.

Cost of stock in trade is allowable deduction. Sisal plants was the stock in

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trade. This argument would not be advanced in U.K. as crops form part of land.

In T.T. Right of Occupancy gives no title to land.

Mohanlal Hargovind No. 7. Purchase of stock in trade. Bundle of documents put in by Court.

Appellants called:- Murray Alexander Carson; Have been in employment of Ralli Bros. since 1923.

xxd. Newbold: The 2½% commission paid to Ralli Bros. Ltd. up to end of 1950 was not royalty. Page 5 is misleading as we were not lessees. I was aware of short term leases to other Companies and that royalties were payable thereon.

M.f.24 we acquired unexhausted improvements and a Right of Occupancy. Considerable negotiations were carried on for a long time on document 7 because of the unexpected "special condition". The Company's acceptance was registered by Government before end 1950, and we accepted in anticipation of our difficulties being cleared up. I did not know how the £174,000 was arrived at, or the 19,000 tons. The words "potential production" appear f.3. I think the estimate of 19,000 tons was a very fair one; it was based on mature and immature sisal on the estates at that time. I considered we were to pay for unexhaustive improvements and royalty.

Column "capital value" f.17. I regarded as fixed and circulating capital. Premium and Royalty columns add up to capital value column. "Balance due on Royalty" was royalty on sisal potential.

P.28, cl. 3, "Purchase moneys" I regarded as premium and royalty.

I knew that in respect of some of the small estates the consideration was by payment of one fixed figure; it was not with working out sisal potential. I would not accept it that the policy of Government was to assist over-capitalisation by splitting up the payment in respect of larger estates.

Re-examined

Exhibit 'A'.

Document showing monthly return put in as Exhibit 'A'. (N.B. Note options set out on p. 21). Mr. Lock fixed sisal potentials - a man of

great experience and we all accepted his assessment. (Land settlement Pamphlet No.4 put as Exhibit 'B') In signing p.24 I had in mind the good faith which has always existed between the sisal industry and Government.

Respondents witness called by consent at this stage.

William Wood: - X'tian, sworn:

Secretary of Committee formed to value estates and allocate them.

(Newbold asks witness what was Government's policy. Borneman objects. Ruled as inadmissible on grounds of irrelevancy as are questions on paragraphs 4 and 5 of Respondents' Statement of Facts. Such evidence, not being matters communicated to other interested parties would carry the case no further. Mr. Newbold asks if to be recorded that in particular he misled the witness to say how the figure of £174,000 was arrived at by his committee).

No questions. Witness stands down.

Appellants' 2nd witness: - Hector Watkins - X'tian, sworn:

Appellants' 3rd witness: John Stansbury Williamson -

X'tian, sworn: Chartered a/c. Nairobi, with Caspers Bros. Partner since 1948. In November 1950 registered. A/c. Ralli Estates Ltd. 1951 produced a/cs. to end August 1951, pages 37 to 41 were a/cs. produced by our firm. Document 7 was produced to me when preparing the a/cs. I thought the 3,492,000/- was correctly charged to revenue and not to capital and it is so charged on p.37. I thought it correct because it was charged on sale of sisal. In my opinion could not be capitalised. No fixed assets could be from production charges. No tangible asses produced.

Xxd. I took view it was a revenue payment.

Re-xd. If I had been told it was capital payment I would probably have qualified the report by adding a note on our views.

Close of case for Appellant.

Adjourned to 2.15

(Signed) E.D.W. Crawshaw,
JUDGE.

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Newbold:- Only 2 grounds of appeal:-

(1) Revenue payment deductable under Section 14.

(2) Cost of stock.

Was payment in fact revenue or capital. Not easy to determine in many cases, as shown by the many cases. In this particular respect U.K. law has some common principles as S.A.

Before beginning of s.14(1). In head someone could include capital expenditure, but in practice held not to. Any way Section 15 (c)

Cases cited are only useful for extracting principle as to what is capital and what is revenue expenditure - facts immaterial.

	10 T.C.192	" bringing into existence an enduring asses....."
Varnden Beg Ltd.	19 T.C.413	" whole structure of Appellants profit-making business ..... "
Staw Bardel Cramel Co., Ltd.	35 T.C.459 471	" the means of getting the gravel and making it ..... "

Raulatt 9. "Tree is capital, fruit is income" (reference not at present to hand).

Not clear why the £174,600 should be as income as against the remaining sum. Total paid was £485,600.

Appellant says:

(a) Truly Royalty

Submits the payment bears no resemblance to Royalty, which is payment for user - e.g. of patent.

(b) Right of user of sisal potential.

What is a sisal potential? If it exists how can it be 'used'. What was purchased was an 'estate' in sense used by Carson, and a Right of Occ. Right of Occupancy is in many respects like a lease, which can be sold. The Right of Occupancy contains condition as to sub-lease.

Sisal does not to ; it is consumed by tenant. Transaction was a sale, and a sale is, except in exceptional cases a capital payment. To

avoid this Appellant has introduced 'sisal potential'.

Only document setting out full conditions is document 7 of 20/12/50, accepted under seal. Sections 91 and 92 of Indian Evidence Act prohibits other evidence of transaction. Nevertheless, taking all the agreed documents, the transaction is one of sale. Document 3 says 'purchase'.

Page 6 - Method of Disposal - "for sale", and "valuation".

Page 7 "premium and royalty". Royalty is associated with leaf potential only is in respect of time of payment, not value. Only evidence as to how the £174,600 is made up is in offer of 20/12/56.

p. 11 6 (a) "purchase".

p. 14 is document attached by Appellant to questionnaire.

p. 16 (5) "ownership".

17 (3) "purchase".

(2) "capital value".

Manner of payment is split, but the nature of the different payments is the same, irrespective of tag given to it of 'Royalty'. All estates, large and small, are given a total "capital value".

Total Royalty was payable; it was only a question of the time it would take based on quantity and price.

The only true document is 7, as it contains all conditions. Unsafe to reply on earlier documents, as changes may occur in meanwhile. Division into moveables and immoveables was for purpose of stamp duty and the £174,600 is described as "Balance of purchase monies". If price of sisal kept low then Government might only get £19,397 of the £174,600; this was to prevent over-capitalisation.

Whether "expected F.O.B. Tanga" might not refer to export from other estates also.

P. 28 Cl. 3 "purchase monies".

P. 31. This letter is reply to Appellants, complaints seems to end the dispute;

P.47 - "sold"

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(c) 3rd ground appeal - "Income nature". Merely to say it is "income nature" gets one on a further.

(d) Commercial agency.

The witness has merely pre-judged the issue which is for the Court to decide.

Submits: Transaction was to bring into being an asset - by purchase and for re-sale. The assets were of enduring advantage to Appellant.

Does not loose capital nature merely by payment by instalments. Method and time payment is immaterial.

Adjourned to 12/12/56.

12.12.56. Court as before.

Newbold contd. Assets, though of differing nature, were taken as a whole.

Refers: No. 16 on list.

p. 312 "By Cl. 2 of the Industries"

Case x. is similar to instant one.

"Further Royalty" has no counterpart in instant case.

p. 313 (5) "It was agreed ... "

In letters both of the 20th December and 20th September it is clear that total sum is capital.

No question of any share in profits of the business in instant case.

In both cases "a sum certain" though lesser price (never a quarter) might be paid if price of sisal low. In fact amount paid off after production of about 6,000 tons only.

Ramsey's case - No.10. Apparent, and varying income payment was related to a fixed sum and so held to be capital.

p.92. "It is of course quite clear ..... method, manner and form ..... "

92. "It is obvious ..... "

94 top, Court can only look at contract under seal, but position the same under all document.

94. "the the provisions..."

95. "It is to be noted ..... "

98. "It is a case ..... " Fixed sum "permeates" instant case.

100 "Throughout it seems"

The many other cases cited by Appellant relate to Patents etc. which are essentially 'user' cases.

Mallaby - Deeley) 23 T.C. 153
) 1938 3 A.E.R. 463.

p. 166 "The distinction" .....

168 "If his obligation ...."

British Salmson No.6 p.40 "the other circumstances"

N.B. Fixed lump sum, and so capital.

The contract is of sale and purchase nature.

No reference anywhere to user of sisal planter; sisal potential relates to something uncertain. Can be no user of a potential. No reference to "potential" in letter of 30th September on which Appellant relies.

Full value in small estates is "capital value"; no difference in principle between small and large estates.

Document 5 (4) " ... balance"

Balance of what? Capital price.

(5) Premium and Royalty columns = "capital value"

p.18. "valuation figure".

Stock-in-trade No evidence of how £174,600 was made up other than in contract. No evidence of being price of stock-in-trade. Carson did not know how sum made up.

C.I.I. v. Pilcher 31 T.C. 314 - No.1 on list

Held:- Growing crop not stock-in-trade.

p. 325 "It was pointed out ..... "

328 "The submission made .... "

331 "It is true to say ..... "

332 "I agree, it is ..... "

In instant case sisal was wasting asset also.

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Borneman in Reply:

Stock-in-trade.

Pilchers' case. Case turned primarily on English law that trees are part of freehold.

P.344 "The 2nd ground .. " No evidence that Pilcher bid for fruit as "industrials" whatever Pilcher may himself had in mind.

No freehold in Crown land. No purchase of sisal land, as only right of occupancy, so all that could be bought was the crop which was stock-in-trade.

This question of stock-in-trade is only in alternative.

User: Respondent has not tried to explain away many of cases cited by Appellant.

In Jones and in Solmson there were transfers of rights.

Agrees that capital does not lose its character by reason of being paid by instalments, but the instalments may be of revenue nature.

As asset being of "enduring nature", Respondent has torn his quotation from passage in British Insurance Cables - 10 T.C. 155.

Refer p.191 - "A sum of money expended ....."

In instant case premium was paid once and for all, but royalty was income recurrent payment.

Ultimate question is whether the £174,600 was paid 'user' of 'sisal potential'. 'Sisal potential was issued by Government - p.3, 4 etc. and has well known meaning in trade. p.5 is Government document and six "Condition of sale" - "estimated leaf potential". Wording clearly shows that the royalty is related to leaf potential. To say that it is related to 'period' is distortion, but in any event is for user.

"Potential" means 'make estimate as regards future', and it was made at time of valuation.

As to single premium on small estates, Carson said only very small potential. Royalty is related to value - unexhausted improvement and schedules.

Indian Evidence Act sec. 91, 92 in commentary say they follow English Law. Appellant does not

attempt to avoid letter of 20/12/50, but merely to show what content of that really means. English Courts in similar circumstances have looked behind words used to find real meaning. Refers to Patterson's case as to looking at 2 agreements.

Royalty not pre-determined - liable to move up or down according to circumstances. Might be none at all. No obligation even to grow sisal. In Ramsey, dentist could have been sued for the £25,000 if he had failed to continue his dentistry.

Instant case the premium had to be paid in any event, and could always be sued on; it was predetermined. No part of the £174,600 could be pointed out in advance as actionable.

Jones case: Respondent said he accepted it wholly.

p. 313 "£750 to reimburse ....." commenting revenue expenses for capital sum is capital payment.

Respondent referred to £491,600 as a sum certain, but it was not - only that less possibly all or part of £174,600.

Ramsey: Only illustration of principle very difficult to reconcile Ramsey with Hogarth, and idle to consider one without the other.

The £491,600 is varyable, not a fixed sum.

p.85 (5) "charged" smashes of capital.

Instant case no "change". Royalty is not a "change" on property - e.g. on a book.

p.97 - "For instance ..... "

In certain circumstances the full amount could be sued on - vital distinction with instant case.

Mallaby - Deeley Not very applicable to present case

Commercial principles 12 T.C. 823.

Tate and Lyles - Jenkin in C.A.
Morton Lords.

How could the £174,600 appear in capitalised form in accounts.

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Revenue nature of payment:

Even if the £174,600 was part of purchase price for capital assets, payment was of revenue nature.

Settlement of capital account by payments of revenue nature appear in Ramsey and many other cases - e.g. Race Course British Central Board - No.27.

User: Mackintosh case - No.18 - is conclusive in present circumstances if accepted. p. 19 "use as they are using it - for 5 years". 10

Salmson p.40 (No.6) "I should have found it very difficult".

Royalty had only monthly existence.

Judgment reserved.

Sgd. E.D.W. Crawshaw,
Judge,
12.12.56.

18th April, 1957. Cor. Biron, Ag. J.

Thorton (for Boreman & Bechgaard) for Appellants. 20

Samuels (for Newbold) for Respondents.

Judgment prepared by Crawshaw J read and delivered.

Thornton applies for leave to appeal to the Court of Appeal for Eastern Africa.

Samuels No objection.

Order: Leave to appeal to the Court of Appeal for Eastern Africa granted as prayed. 30

Sgd. Philip Biron,
Ag. Judge,
18th April, 1957.

No. 10.

In the High Court of Tanganyika.

No.10.

Judgment of Mr. Justice Crawshaw, 30th March, 1957.

JUDGMENT OF MR. JUSTICE CRAWSHAW

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM
Miscellaneous Civil Appeal No. 19 of 1955

RALLI ESTATES LIMITED — Appellant

versus

THE COMMISSIONER OF INCOME TAX — Respondent

JUDGMENT

These are two appeals by Ralli Estates Limited against assessments of the Commissioner of Income Tax. Miscellaneous Civil Appeal No.19 of 1955 is in respect of a sum of £80,274 relating to the Year of Income 1952, and Miscellaneous Civil Appeal No. 20 is in respect of a sum of £94,326 relating to the Year of Income 1951. The appeals were heard together, as precisely the same considerations apply to each.

2. These two sums, amounting together to £174,600, were paid by the Appellant to the Government of Tanganyika (hereinafter referred to as the Government) as part of the consideration under an agreement whereby they acquired from the Government two sisal estates named Lanconi and Mjesani respectively, and an additional area of land of 6,000 hectares adjoining Lanconi, on a 99 years' right of occupancy, together with the machinery and other property thereon. Briefly the question for decision is whether this sum of £174,600 was a capital or a revenue payment for the purpose of income tax.

3. The relevant statutory provision is contained in Section 14 of the East African Income Tax (Management) Act, 1952, sub-section (1), which commences:-

> "14. (1) For the purpose of ascertaining the total income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year of income by such person in the production of the income, including - "

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Then follow a number of specified deductions. The Appellant has not, as I understand it, relied on any particular specified deduction but has based its appeal on the general ground that the payment of the £174,600 constituted "outgoings and expenses wholly and exclusively incurred during the year of income .... in the production of the income" of the Appellant, and therefore deductible. A number of English cases have been cited to me covering a considerable number of years but, as Counsel for both parties agree, the principles which in England have been held to govern the determination whether a payment is capital or revenue are in the main equally applicable in Tanganyika. Rule 3 (a) to Schedule D of the English Income Tax Act, 1918, is very similar in terms to our s.14 (1) and reads :-

> "3 (a) In computing the amount of the profits or gains to be charged no sum shall be deducted in respect of - (a) any disbursements or expenses not being money wholly or exclusively laid out as expended for the purposes of the trade, profession or vocation".

The same provision has been reproduced in the English 1952 Act, and the law was similar even prior to the 1918 Act.

4. The Appellant relies on the following grounds of appeal contained in paragraph 1 of its memoranda (in Civil Appeal No.20 read '1951' for '1952'). Sub. para's (c) and (e) were not pursued:-

> "(a) The said payment constituted outgoings and expenses wholly and exclusively incurred by the Appellant in the production of the Appellant's income for the year of income 1952 and should accordingly be allowed as a deduction for the purpose of ascertaining the Appellant's total income for 1952, under the provisions of Section 14 of the East African Income Tax (Management) Act, 1952;
>
> (b) In the alternative the said payment to Government was paid as royalty in accordance with the particulars of certain sisal estates advertised on behalf of Government on various dates in 1950, and should accordingly as a revenue payment be allowed as a deduction from income as aforesaid.

(d) In the alternative the said payment to Government represented part of the cost to the Appellant Company of stock-in-trade of its business and should accordingly be allowed as a deduction from income as aforesaid".

The Respondent on the other hand maintains that the sum of £174,600 was in fact as much a part of the total purchase price as was the "premium", and a capital payment in respect of the assets acquired, and thus non-deductible.

5. Perhaps it might be as well here to refer briefly to the history of the Lanconi and Mjesani Estates (with which one way or another Ralli Brothers Limited have been associated since before the last war when they were German-owned) and to this transaction in particular. Following the outbreak of war, and up to the time of their acquisition by the Appellant from Government in 1950, the estates were managed by Ralli Brothers Limited, at times on behalf of the Government and at other times on behalf of the Custodian of Enemy Property. The Appellant is a wholly owned subsidiary of Ralli Brothers Limited and was incorporated on the 21st December 1950 for the express purpose of acquiring and working the estates. In June 1948 the Custodian of Enemy Property prepared a memorandum setting out the basis on which it was proposed to dispose of the many sisal estates under his charge. They were to be transferred to the Governor, who would grant long term rights of occupancy to applicants approved by a selection committee specially to be appointed for that purpose. As to valuation of an estate the memorandum said this :-

"Valuation:

Valuations of properties will be required before the granting of long-term rights of occupancy. Rent will be payable under the rights of occupancy, presumably assessed on the unimproved value of the land. A premium will be fixed for the value of the unexhausted improvements. Consideration will have to be given to :-

1. Valuation of sisal areas.
2. Valuation of machinery equipment".

It is not, I think, in evidence whether this memorandum was ever made public, but extracts from it appear in the agreed bundle of documents.

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6. On the 7th of March 1950 the Government wrote a letter to the Tanganyika Sisal Board, of which the following is an extract :-

> "It is proposed to base the valuation of each estate on its potential production. The Custodian can arrange for all relevant information.
>
> It is proposed to advertise the sisal estates for disposal very shortly, and it would greatly facilitate the disposal of these estates if your Board would agree to Mr. Lock's advising on the valuation of the individual estates, and in particular on the assessment of the potential production".

On the 17th of March 1950 the Government published in the Tanganyika press a notice, of which the first paragraph reads as follows :-

> "Applications are invited for the purchase of ex-German Enemy Sisal Estates in Tanganyika Territory, East Africa. Details of the Estates and the mode of disposal are contained in a Catalogue which persons interested may obtain from ..... "

and the final paragraph reads:-

> "The Estates have not yet been valued, but premia, Royalties and Rentals payable will be available before the Selection Committee meets".

The following are extracts from the foreword to the catalogue published as "Land Settlement Pamphlet No.4 (in which, incidentally, Lanconi is described as Lanzoni):-

> "History of Short Term Leases: After the outbreak of War in 1939, the Tanganyika Sisal Growers Association was consulted by Government with regard to the leasing of the Enemy Owned Sisal Estates. The Association advised Government that in the circumstances, the main qualifications for lessees should be that they owned Sisal estates in proximity to the enemy owned properties; that they should be of good repute in the Industry; and that they should possess a sufficiency of staff and labour to undertake the leases of the enemy

estates. Estates were leased in the first instance for a period of one year, at more or less nominal rents: but Royalties were payable to the Custodian of Enemy Properties. These Royalties were based on a sliding scale according to the grades of sisal produced and sold. Subsequently, and from time to time, new leases were entered into upon terms and conditions that shewed considerable variation from those contained in the original leases. Eventually in 1943, leases were granted for a term of five years, which expired on the 31st December 1948: and since the last mentioned date, the leases have been extended for two further periods of one year which as indicated above, will expire on the 31st December 1950. These leases contained provision for the payment of a nominal rent and a Royalty that is assessed on production at current market prices. The leases also included inter alia, covenants for the maintenance by the lessees of the areas of mature sisal, of the buildings and equipment; and for payment by the Custodian, from Royalties received, of the cost of necessary capital improvements, e.g. buildings, machinery and replanting. These capital improvements have been, and are, effected in accordance with an annual programme, mutually agreed between the lessees and the Custodian.

Pursuant on these arrangements, most of the Royalties received have been "ploughed back" into the land, or expended on the purchase of machinery and, to an even greater extent, utilised to give effect to a large building programme, covering mainly the provision of permanent housing for labour. In the result most of the Enemy Estates which had deteriorated considerably during the early years after the outbreak of the War, have recovered their pre-war potential, so far as production is concerned".

"Method of Disposal: All these Sisal Estates are now being advertised for sale in the United Kingdom, and in East Africa. Arrangements have been made for the valuation of the estates to be undertaken. Every applicant for the purchase of a sisal estate must submit, with his application, a duly completed questionnaire form, which can be obtained from

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the Land Settlement Officer, Department of Lands and Mines, Dar-es-Salaam. Applications should reach the said Officer, on, or before the closing date for applications, as mentioned in the advertisement of Sale. The estates will be allocated to suitable applicants on the recommendations of a Selection Committee, which will be appointed by Government".

"Conditions of Sale: The conditions of sale will include the offer of a Right of Occupancy over each estate to the approved applicant, on the basis of a Right of Occupancy (or lease) for a term of 99 years, subject to payment of a premium, a royalty, and a rent, and to one exception, namely that the "Karanga" Estate will be offered for a term of 20 years only (of note appended at foot of relevant entry in Catalogue infra). The premium and royalty will be related to the value of the unexhausted improvements on the land, including leaf, building, machinery and equipment; and the rent will be based on the unimproved value. The premium will take the form of a cash payment; but the royalty will be payable over an indeterminate period, related to the estimated leaf potential on the estate, at the time of disposal. The land rent will be subject to periodical revision in accordance with the terms of the Land Ordinance; and the other conditions of the Right of Occupancy will also be governed by the said Ordinance, and the regulations thereunder".

7. In August 1950 Ralli Brothers Limited completed the questionnaire and made application for Lanconi and Mjesani Estates, and in a letter of the 30th of September 1950 to Ralli Brothers Limited (hereinafter referred to as "the letter of the 30th September") the Member for Lands and Mines referred to a pending interview of applicants by the Selection Committee, and then said as follows :-

"2. In the meantime, detailed information can now be supplied to applicants regarding the terms of disposal. As explained in the Catalogue, the estates will be disposed of on long agricultural leases of 99 years, except where otherwise stated. A yearly rental of Shs.2/- per acre will be charged. Payment of a premium and a royalty will be required in all but

those estates where the capital value is small, in which cases the full value will be payable as premium.

3. The premium will be payable as follows :-

10% at the time of allotment, to be forfeited if the purchase is not completed.
30% within 21 days of allotment.
Balance within 90 days.

4. Royalty will be charged on a sliding scale, based on the average f.o.b. price of line fibre, at the rates shown in the attached table of royalties. Royalties will be payable until, in the case of each estate, the whole balance due by way of royalty has been extinguished, or until royalty has been paid on the tonnage liable to royalty, whichever occurs the earlier.

5. The following are the details regarding the estates for which you are an applicant:-

Estate	Catalogue Ref. No.	Total Net Capital Value	Premium Payable	Balance due on Royalty	Fibre Tonnage on which Royalty Payable Tons
		£	£	£	
Lanconi	T1512	191500	121200	70300	7809
Mjesani	T1513	294100	189800	104300	11588
Kilulu	T1514	134700	83800	49900	6153

Other particulars or notes: The above valuation figure for Lanconi Estate is only for the area under sisal. The successful applicant will be offered an additional 6,000 hectares at a premium of £1 per hectare and an annual rental of Shs. 2/0d per acre.

Please sign the attached acknowledgment and return at your earliest convenience.

I am, Gentlemen,
Your obedient servant,

Sgd.....

MEMBER FOR LANDS & MINES.

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TABLE OF ROYALTIES

Price of Sisal per ton f.o.b.	Royalty per ton
£70 - or under	£1. 0. 0."

Then follows the sliding scale, the last figures being "£146 - or over ... £56.18.0." It will be seen that the sum of £174,600 in dispute is the total of the first two items in column 5 in para.5 above.

8. Mr. Carson, a director of Ralli Brothers Limited, duly represented his company before the selection committee, but his appearance seems to have been no more than a formality, as the committee already had very full information about the company. He said in evidence: "there was no amplification of the documents which I had already received, and on the basis of which my application had been made".

9. On the 26th of October 1950 the Member for Lands and Mines wrote to Ralli Brothers Limited referring to his letter of the 30th of September and saying that on the advice of the selection committee the company had been selected as the future tenants of Lanconi and Mjesani. Paragraph 3 of the letter reads as follows:-

> "3. In accordance with the conditions of sale as set out in paragraph 3 of my letter under reference, I shall be grateful to receive your remittance representing 10% of the premium after which a formal offer of a Right of Occupancy will be addressed to you as soon as possible. The term of years in the Right of Occupancy will date from 1st January 1951".

10. On the 20th of December 1950 a further letter was written, this time to the Appellant company, and signed by the Acting Land Officer (hereinafter referred to as "the letter of the 20th December"). It was not sent direct, but under a covering letter of the 27th December. Although it does not specifically refer to the letter of the 26th of October, one is entitled I think to presume that it is the "formal offer" mentioned in that letter. This letter of the 20th December starts off by saying:

"Your application ..... has been approved ..... subject to the terms and conditions herein contained and to the Special Conditions annexed hereto". In fact it would seem that the Appellant Company was not incorporated until the following day, the 21st of December, and that it was the offer of Ralli Brothers Limited which was meant, although I understand that Government knew that the Appellant Company was being formed to acquire the estates, and hence, I suppose, this small inaccuracy. The material part of paragraph 2 of this letter is as follows (the figures are in shillings, but for ease of comparison with other documents I have added the equivalent in pounds also):-

"2. This offer is subject to the said land referred to being found available on survey, the final demarcation of the boundaries being determined by Government.

If you accept this offer payment of the full purchase monies amounting to -
Shs. 9,832,000/- (£491,600) of which
Shs. 8,992,920/- (£449,646) shall be deemed to be in respect of the said land, buildings, immovable machinery fixtures and effects and Shs. 839,080/- (£41,954) shall be in respect of movable machinery, chattels, vehicles, and other effects capable of manual delivery and purchased by you, together with the first year's rent, fees for preparation and registration of title deeds, stamp duty and survey fees, when demanded shall be made in the manner following:-

(i) As to Shs.6,340,000/- (£317,000) thereof payable as a premium as follows:-

(a) 10% thereof amounting to Shs.654,000/- (£32,700) already paid on allotment, receipt whereof is hereby acknowledged.

(Here I would interpose to say that the figure should surely be 634,000/- (£31,700))

(b) 50% thereof amounting to Shs.3,170,000/- (£158,500) already paid, receipt whereof is hereby acknowledged.

(c) 40% thereof amounting to Shs.2,536,000/- (£126,800) due and payable on the 24th day of January, 1951.

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(ii) The balance of such purchase monies, amounting to Shs.3,492,000/- (£174,600) shall be paid by monthly instalments. A notice informing you of the amount of such instalment will be sent on or before the 15th day of each month. The first of such payment shall become due and payable on the 15th day of February, 1951, and thereafter on the 15th day of each and every subsequent month, and shall be paid on or before the last day of each month. The amount of such monthly payments shall be assessed by reference to the tonnage of line sisal fibre produced on the said land and exported during the month preceding the dispatch of the notice hereinbefore mentioned. The tonnage exported shall be assessed by reference to the return made under the Sisal Industry Registration Rules, 1946. Provided always that the Governor shall have option to be exercised at his sole discretion, to assess the said tonnage by reference to the tonnage of line sisal fibre produced on the said land by reference to the monthly returns submitted by you, under the Sisal Industry Registration Rules, 1946. Such monthly payments shall be calculated on a sliding scale determined by the average of the monthly sales of all grades of line sisal fibre exported FOB from Tanga and Dar-es-Salaam as set out in the return submitted by the Commissioner of Customs for the East African Territories to the Governor at the rate provided for in the Schedule hereto. The said monthly instalments shall be paid until such time as either the said balance of the purchase monies is paid or until the total fibre tonnage of 19,397 tons shall have been cut and accounted for, whichever shall first occur. The occupier agrees to pay interest at the rate of 5% per annum on each and every monthly instalment, remaining unpaid after the last day of each and every month, as aforesaid, until the date of payment and to accept as final the figures of the monthly instalment as shown in the said notice.

.....

(vi) This offer must be accepted by the 31st December, 1950, after which date it ceases to be valid".

Apart from interest on overdue "instalments", no interest was payable on the balance of £174,600 at any time outstanding. There then follow provisions for the revocation of "this agreement for sale of a Right of Occupancy" in certain circumstances. Then comes a heading "Schedule" with sub-headings as follows :-

"Rates at which Balance of Purchase Monies to be Calculated.

Average FOB PRICE of Line Sisal Fibre	Amount Payable per ton "

The columns of figures thereunder are identical with those in the letter of the 30th of September, except in two instances where the differences might be unintentional or intentional, I do not know. I have not the originals before me, and anyway Mr. Newbold for the Respondent has not drawn attention to them. "Special Conditions" follow, which are not material to the appeals. Endorsed at the end is the acceptance by the Appellant on the 31st of December, the last date prescribed therefor; it is in the following terms:-

"Ralli Estates Limited hereby accept a Right of Occupancy over the said Land referred to in the foregoing Offer and in the Special Conditions annexed hereto.

Dated this 31st day of December 1950.

The Common Seal of Ralli Estates Limited was hereunto affixed in the presence of :- } Common Seal of Ralli Estates Limited

M.A. Carson
G.C. Priest } Directors".

This letter with the endorsement does not appear to have been returned until the 31st of January 1951 for in a letter of that date addressed by the Appellant to the Land Settlement Officer for final paragraph reads: "With regard to the Formal offer - without prejudice to the reservations which have already been made - we return the original sealed

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by us". The 'reservations' referred to are not, I think, material to this appeal.

11. Mr. Newbold has submitted, though I was doubtful with what conviction, that by virtue of the provisions of Sections 91 and 92 of the Indian Evidence Act 1892 the Court is precluded from admitting evidence extrinsic to the Agreement contained in the letter of the 20th of December and the acceptance of the 30th of December. The body of Section 91 reads as follows :-

> "When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained".

Then follows a list of exceptions not relevant to the issue. The body of Section 92 reads as follows:-

> "When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form or (sic) a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms".

It is to be observed that the prohibitions are restricted to evidence affecting the "terms" of the contract. It seems to me, however, that the evidence of the surrounding circumstances which the Appellant asks the Court to consider does not affect, alter or contradict the "terms" of the Agreement, but merely seeks to elucidate what in fact the nature of the payment of £174,600 is. By the letter of the 20th of December the Appellant has to pay precisely the same sums of money and in precisely the same way as was provided for in the letter of the 30th of September, the difference is

in the description of the monies. In the letter of the 30th September the £174,600 is described as the balance of the capital value due on royalty (royalty having been related in earlier documents to "leaf potential"). In the letter of the 20th of December, the word 'royalty' is dropped, and the sum is described as the "balance of purchase monies" included in a larger sum "deemed to be in respect of ..... land, buildings, immovable machinery, fixtures and effects". Between the parties, this change in 'label', as Mr. Borneman for the Appellant put it, could make no difference at all, but for the purpose of income tax it may be very important. I cannot see that there is anything contrary to Sections 91 and 92 of the Indian Evidence Act in the Court looking at the surrounding circumstances, including the negotiations, to find out what in fact those words in the letter of the 20th of December really mean. If this was not so, one can imagine that in many cases tax would be quite wrongly avoided by the party assessed and in certain circumstances (e.g. if the other party was the Government, or the incidence of taxation varied between parties) less income tax might be recovered than, on the true construction of the agreement, should have been paid. After all, the present proceedings are not between the parties to the agreement and are not in dispute of its terms. In fact I find it difficult to believe that the letter of the 20th of December was intended to alter or modify the terms which had already been agreed between the parties. No specific mention of any alteration or modification was made in the letter (which at such a late hour one would have expected had it been intended, especially if it was one which might involve a very large sum of money), and only at most two days were given for acceptance, which suggests that the letter was regarded as being no more than the formality referred to in the letter of the 26th of October. Indeed, all but 40% of the premium had been paid to and accepted by the Government prior to the letter being written. I suppose it is possible, although this is pure speculation, that the change of wording in the letter of the 20th December might be explained by the Lands Department having consulted the Income Tax authorities which it would appear at some time it did do from its letter of the 8th of January, 1951, to Ralli Estates Limited.

12. Mr. Borneman has referred me to the case of

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Paterson Engineering Company Limited v. Duff (H.M. Inspector of Taxes), 25 T.C.43. In that case contracting parties entered into a written agreement in 1934 whereby certain rights, including licences to use certain patents were granted to the Appellant Company in consideration of a minimum royalty of £2,000 per annum. On this being assessed to tax, the parties entered into a new agreement in 1938 under which royalty of only £100 per annum (which was admittedly not deductible) was to be paid in respect of patents and a minimum of £1,900 (claimed to be deductible) was allocated as royalty in respect of the other benefits. The appeal court referred both agreements back to the General Commissioners to determine what in fact the payments were in respect of. This case was cited as an illustration not only of the manner in which an English court will look into the nature of a payment, but also of its power to go behind an agreement for this purpose. As to the latter, it seems to me, however, that the Court did not go so far as to say that in considering the second agreement the first agreement could be referred to, possibly because to have done so would not have assisted the inquiry; the relevant agreement was to be looked at in respect of the assessment at the time that agreement was in force, though in the case of one assessment it was necessary to look at both agreements because part of the income tax year had been under one agreement and a part under the other. The concern of the Court was to see that the monetary consideration was properly apportioned between the various benefits which the Appellant Company was to receive under the agreement in question.

A case more in point would appear to be Mallaby-Deeley and Another v. Commissioners of Inland Revenue, 23 T.C. 153, where the Court looked at an earlier undertaking, although a later deed, which the Court found was intended to replace it, was complete in itself and made no reference to the earlier document. The Court was thereby, and in the light of the surrounding circumstances, able to arrive at the true nature of the transaction.

13. In considering whether a payment is capital or income it has been said over and over again in the English courts that the true nature of a transaction must be determined in the light of all the facts, and that although one transaction might be

very similar to another it may be that one will fall on one side of the line and one on the other, though the distinction between them be a narrow one. There is a long line of cases on this subject to many of which I have been referred, but apart from drawing a close analogy between one or more of them and the instant case Counsel on both sides has been at pains to stress rather the importance of the principles which have been held to apply and the signposts which the Courts have used in coming to their decisions, and not so much the comparison of the facts themselves. As Finlay J. said in British Salmson Aero Engines Limited v. the Commissioners of Inland Revenue, 22 T.C. 29, at page 33, " ..... the question of capital or income is a question to be decided upon a survey of the particular facts in each particular case".

14. The authorities make it amply clear, also, that because a payment has been described by the parties in words which indicate it to be capital or income as the case may be, those words are not necessarily descriptive of what in fact is the true nature of the payment. In the Commissioners of Inland Revenue v. Ramsay, 20 T.C. 79, where in an Agreement it was said that certain sums were "capital sums paid in respect of the purchase price", Lord Wright, M.R., observed, "that, of course, is not conclusive of anything, because whether they are capital sums or not must be determined by a consideration of the substance of the transaction, the terms of the contract". In the instant case expressions which on the face of it appear to be contradictory have been used and there has been much argument on the true meaning of such expressions as 'royalty' (which frequently appears in connection with the sum of £174,600) and 'total net capital value' (which in paragraph 5 of the letter of the 30th September includes the 'royalty', and 'purchase money' as used in the letter of the 20th of December.)

15. Mr. Borneman, for the Appellant, submits that the consideration for what the Appellant acquired was (a) rent for the right of occupancy based on its undeveloped value, (b) a sum of £317,000 for unexhausted improvements (the sum is shown under the heading "premium payable" in paragraph 5 of the letter of the 30th of September, made up of £121,200 in respect of Lanconi and £189,800 in respect of

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Mjesani and includes also £6,000 premium in respect of the additional land referred to in the penultimate paragraph of that letter), and (c) a royalty on sisal produced limited to a maximum of £174,600. About (a) and (b) there is no dispute; (a) of course is deductible income, and (b) as is agreed, was a capital payment. Mr. Borneman's main contention is that (c) is 'true royalty', but he goes further than that and says that even if it is held that the £174,600 was in fact a part of the so-called 'purchase price', then it is still not a capital sum for the payments were essentially of an income nature. That this can be so is clear from the authorities which have been cited. In one of these, William John Jones v. Commissioners of Inland Revenue, 7 T.C. 310, Rowlatt J. observes that merely because you can say a certain payment is consideration for the transfer of property, it does not necessarily follow that it must be looked upon as the price in the character of principle. Consideration or purchase money may be whole or in part capital in nature or income in nature. In the Salmson case, Finlay, J. said, "I would add this, that if, contrary to my view, it could be recorded not as a licence to use but as a sale of the whole sub-strata, so to speak, of the business, of the whole property, that would not conclude the question because it is quite clear that there may be a sale of property in consideration of annual payment".

16. In support of his contention that (c) was 'true royalty' Mr. Borneman maintained that what the Appellant company acquired was merely the 'user' of the 'sisal potential'. Mr. Newbold has said that he does not understand what is meant by 'sisal potential' and that the expression is meaningless and does not appear in the documents before the Court. Those actual words may not appear, but in the letter of the 7th March, 1950, from the Government to the Tanganyika Sisal Board, the Government says, "It is proposed to base the valuation of each estate on its potential production", and in the published catalogue it is said, "The royalty will be payable for an indeterminate period, related to the estimated leaf potential on the estate at the time of disposal". It has not been suggested that these documents did not come to the notice of the Appellants (and for the purposes of this transaction the Appellants and Ralli Brothers

Limited must be regarded as one), and I have no doubt that they did; indeed the catalogue is referred to in the letter of the 30th of September. 'Leaf potential' can, of course, only mean 'sisal potential'.

17. What then is this leaf or sisal potential? Mr. Carson, a Director of the Appellant Company, and, I believe, of Ralli Brothers Limited also, who has been connected with the latter's sisal activities in East Africa since many years before the war, says in evidence that he had no knowledge of how the £174,600 was made up. He says that the 19,397 tons, which was the maximum tonnage on which royalty was required to be paid was, "an estimate of the line fibre which would be recovered from the mature and immature sisal growing on the estate at the time of the sale". From the Appellant's production figures which were produced in Court it would seem that it might have been expected to produce this quantity of sisal in 7 or 8 years. On examination in chief, Mr. Carson, when asked what was the 'sisal potential', replied, "The sisal potential was the estimate of the amount of sisal line fibre which could be extracted in the future by applying for the sisal areas on the estate, both mature and immature. The machinery and other assets which have to be used in working a sisal estate, plus the cost of the labour force," and in cross examination he said, "The potential depends not only on the fibre in the leaf but in machinery, labour cutting the leaf, the transport system - it is all one whole from that point of view". Mr. Borneman's submission is, as I understand it, that the 'potential' referred to an estimate as at the time the estates were disposed of, of the future production of sisal, but that whatever its precise meaning may be, the payments in respect thereof were in any event "for the using of the sisal estate", and was of an income nature.

18. To determine what is really meant by the expression 'sisal (or leaf) potential' it is necessary to look carefully at all the documents. No such expression occurs in either of the two main letters of the 30th of September and the 20th of December. Insofar as the letter of the 30th of September is concerned this is probably because the basis on which the royalty was assessed had already been stated in earlier documents, whilst in the letter

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of the 20th of December a different method of assessment had been used. The memorandum of June 1948, which from its terms one would suppose had Government sanction, says that on disposal of estates:-

> "A premium will be fixed for the value of the unexhausted improvements. Consideration will have to be given to :-
>
> (1) Valuation of sisal areas.
> (2) Valuation of machinery equipment".

My reading of that is that items (1) and (2) have been classed as 'unexhausted improvements'. The estates were then presumably transferred to Government, and in the letter of the 7th of March 1950 the Government says that the basis of valuation will be their 'potential production', and, later in the same letter, will 'in particular' be the 'potential production'. Only a few days later, on the 17th of March 1950, the Government notice appeared in the press inviting applications for the 'purchase' of the estates, and stating (in so many words) that after their valuation, particulars of the "premia, royalties and rentals" would be available. Reference therein was made to the catalogue already mentioned. In paragrapn 2 of the foreword to the catalogue it is said that the production potential of the estates had been improved by money having been "ploughed back into the land, or expended on the purchase of machinery, and ..... to give effect to a large building programme". So here, production potential is related to a wide variety of influences, a view which Mr.Carson also took. The 'Method of Disposal' is described in the catalogue as 'sale' and 'purchase' at a 'valuation'. Payment is to be a rent based on the 'unimproved value' of the land, and premium and royalty. Under the heading "Conditions of Sale" it says, "the premium and royalty will be related to the value of the unexhausted improvements on the land, including leaf, building, machinery and equipment ..... The premium will take the form of a cash payment; but the royalty will be payable for an indeterminate period, related to the estimated leaf potential on the estate at the time of disposal". Reading these documents together, it seems to me that, up to this stage anyway, the transaction was, contrary to the view of Mr.Borneman, intended to be a vendor and purchaser one.

What the Government was offering for disposal was (so far as could be compatible with a long term right of occupancy) the estates and everything to go with them including their value as leaf producers. The value of the buildings, machinery and equipment was, perhaps, comparatively easy to assess, but there were also those other unexhausted improvements such as the condition of the land after clearing and the growing crops. All these were to be taken into consideration in valuing the 'sale' price. What the Appellant was buying was (apart from the absolute right to movable property) the use of the unexhausted improvements for a period of 99 years. The consideration for this might have been an inclusive annual rent, which would no doubt have been a deductible outgoing or expense for the purpose of income tax, but instead there was to be charged a rent in respect of the undeveloped value of the land and a lump sum, or lump sums, in respect of the unexhausted improvements and movable property. I see no reason to place any narrow construction on the words 'unexhausted improvements'. On the contrary, in the documents just referred to they appear to be given the widest possible meaning, and to include everything not covered by the rent, such as, in the words of the foreword to the catalogue already quoted, the "leaf, buildings, machinery and equipment". It is interesting to observe that the definition of 'unexhausted improvements' in the Land Ordinance is also widely drawn and reads as follows:-

> " "Unexhausted improvements" mean anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the quality or the amenity thereby, but does not include the results of ordinary cultivation other than standing crops or growing produce".

The expressions 'potential production' and 'leaf potential' (which I take to have the same meaning) have perhaps been used rather losely in the documents; in valuing the estates they have been used to include all the unexhausted improvements and assets which contribute to the production of sisal and for which a total price is to be assessed, whilst in relation to actual payment reference is

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only to quantity of leaf which it is expected will be produced.

19. I do not think that the letter of the 30th of September really alters the position, and although the Appellants rely mainly upon that letter as containing the agreed terms, it has not been suggested by Mr. Borneman that those terms are in any way inconsistent with the terms proposed in the earlier documents - on the contrary. The consideration is set out rather differently, but the same theme of a 'valuation' and a lump sum or sums is to be found in paragraph 5, where the sum under the heading 'Total in Capital Value' is shown divided into a sum for 'Premium' and a 'Balance due on Royalty'. In the following paragraph, the whole is referred to as "the above valuation figure". I also find consistency in that part of paragraph 2, which reads, "Payment of a premium and a royalty will be required in all but those estates where the capital value is small, in which case the full value will be payable as premium" in that an inclusive 'capital value' is again related to a premium and royalty, although in the special circumstances (Mr. Carson pointed out that the sisal potential of such estates would be very small), the two were to be unified in a single premium payment, presumably for convenience.

20. In submitting that the monthly payments, aggregating £174,600, are properly deductible under Section 14, Mr. Borneman has given four reasons: (1) (mentioned before) that they were "truly royalties", (2) that they were made for the "right to exploit sisal potential", (3) that even if they were to be regarded as part of the purchase price, they were still "payments of an income nature", and (4) that they were "in accordance with the ordinary principles of normal accounting". The question of stock in trade was dealt with separately by Mr. Borneman and will be mentioned later, as will the question of accounting. It is now necessary to consider whether the payments, though part of the purchase price, were revenue in nature. In the case of William John Jones, a fixed sum which had been described as 'royalty' was admitted to be capital in nature, but further payments in dispute, also described as 'royalty' and based on the vagaries of production, which were not attached to any fixed sum, were held to be income in nature.

Rowlatt, J. there drew attention to the latter being sums which rose and fell with the chances of the business and said, "I think when a man does that he does take an income - that is what it is". Lord Wright, in Ramsay's case, referred to this and expressed the view that Rowlatt J. was not laying down a universal proposition, but one which related to the particular circumstances before him. I have also been referred to the cases of Commissioners of Inland Revenue v. Ledgard 21 T.C. 129, and the Commissioners of Inland Revenue v. Hogarth, 23 T.C. 491, which relate to the rather specialised subject of a purchase by continuing partners of the share in their firm of a discontinuing one. In Hogarth, Normand, L.P., distinguished that case from Ledgard (the facts are not of particular relevance to the instant case), and said, "What we have to look to is the substance of the matter as disclosed by the terms of the document itself. It is open to parties who are about to enter into an agreement of this kind either so to frame their agreement as to make that payment a capital payment, although it may be measured by the fluctuating profits of the business in future years and although it may be paid in instalments, or, on the other hand, to make that payment an annual payment". There are many features of the Ramsay case which are similar to the instant one, although I am not, of course, suggesting that it is on all fours. In the Ramsay case part of the consideration, for the purchase of a dentist's practice, was a sum of £10,000 payable by ten annual instalments free of interest, each equivalent to 25% of the future net annual profits of the practice. If at the end of ten years the aggregate was more or less than the £10,000, the latter sum was to be deemed as varied to that extent. It was held that the instalments were payments of capital, but Mr. Borneman has sought to distinguish the Ramsay case in that there the £10,000 was a 'debt' which if, for instance, the Purchaser was to die or fail to carry on the practice, could be sued on, whereas in the instant case the Government had no remedy should the Appellant decide to stop production of sisal. I am not at all sure, however, that if it was necessary to decide the issue, it would not be held that it was an implied term of the dealings between the parties in the instant case that the Appellants should carry on the business of sisal production. This was clearly the intention of the parties throughout

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the negotiations, and indeed the Selection Committee was specially appointed to see that applicants were suitable for the purpose. It must be remembered that the Appellants' formal application for the estates was supported by their answers to the 'questionnaire' (Document No.9), in which they announced their intended programme for sisal production should they obtain the estates. It must surely be presumed that this was largely the basis on which the Committee made their recommendations to Government, and on which the contract was entered into. Should they have failed to carry on their business of sisal production, it seems to me that they might well have been held liable to pay the full £174,600.

21. I do not propose to review in detail the many cases to which I have been referred, helpful though I have found them and grateful as I am to Counsel for their assistance in this manner. The cases for the most part are so near the border-line between capital and income, that it seems useless to try and draw an absolute comparison between the instant case and reported cases, for some small difference of circumstance might be vital. Rather, I have read the cases in order to try and appreciate the guides and signposts which the courts have recognised in coming to a determination on the particular facts. Mr. Borneman's main argument has been that the payment of the 'royalties' was for the 'user' of the sisal potential, whilst Mr. Newbold has of course taken the opposite view and says that the sum of £174,600 permeates that part of the transaction which we are considering, and that in any event there could not be a 'user' of a 'potential', which is something in the future. Mr. Borneman has used the word 'user' in the sense of the enjoyment of some asset, such as the hire of a factory as opposed to its purchase, or royalty for the right to extract coal for which periodical payments are made; there is, of course, in the instant case the rent which is paid for the use or 'user' of the land based on its unimproved value. I have been referred by Mr. Borneman to three cases to illustrate that if a sum is paid for a right of user, it is at least indicative that the transaction is of an income nature, they are: Constantinesco v. Rex, 11 T.C. 730; Nethersole v. H.M. Inspector of Taxes, 28 T.C. 501; Commissioners of Inland Revenue v. Desoutter Brothers Limited, 29 T.C. 155. These cases again were of a somewhat specialised type, the first and third relating to patent rights and the second to copyright. The

Rustproof Metal Window Company v. Commissioners of Inland Revenue, 29 T.C. 243, another patent case, refers to Desoutter and Nethersole. Lord Greene, M.R., in the Rustproof Metal case, at page 268, says, "that the receipt of a sum which is based on actual user points more strongly (and it may be conclusively) to its being of an income character is true". In the Nethersole case, Lord Greene referred at page 512 to the Trustees of Earl Haig v. Commissioners of Inland Revenue, 22 T.C. 725, in which the Lord President, (Normand) said, "The argument for the Inland Revenue was that payment for the use of a thing is of the nature of rent or royalty or the like and cannot be merely the price of the thing. But that only brings the argument back to a discussion of the nature of the thing and of the use made of it". There is no doubt, of course, that the £174,600 was paid for user, but then so was the premium which must have included in part anyway the use of buildings and other reversionary assets. The 'premium' and the 'royalty' cannot, I think, be differentiated between except as to method of payment. On the question of reversion, Lord Greene in the Nethersole case at page 510, said:-

> "One might perhaps have expected that where a piece of property, be it copyright or anything else, is turned to account in a way which leaves in the owner what we may call the reversion in the property, so that upon the expiration of the rights conferred, whether they are to endure for a short or a long period, the property comes back to the owner intact, the sum paid as consideration for the grant of the rights, whether consisting of a lump sum or of periodical or royalty payments, should be regarded as of a revenue nature. We emphasise the word "intact" - salva rei substantia, to use the expression adopted by Lord Fleming in Trustees of Earl Haigh v. Commissioners of Inland Revenue, 22 T.C. 725, at page 735 - since (save in the special cases of wasting property) if the property is permanently diminished or injuriously affected, it means that the owner has to that extent realised part of the capital of his property as distinct from merely exploiting its income-producing character.
>
> A principle on some such lines as these would not, we think, be out of accord with the popular idea of the distinction between

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> capital and income. But it is not, we think, open to this Court to adopt it as in itself affording a sufficient test. Such a principle, if it had been the correct one, would by itself have afforded a simple answer in the case of Constantinesco v. The King (11 T.C. 730) where the inventor retained his patent".

The reversion in the instant case is certainly vested in the Government but payment is based on a lump sum as part of capital valuation and has not, in my view, been calculated on true royalty. Mr. Borneman has also referred to the case of Stanton v. Federal Commissioner of Taxation, 6 A.1.T.R.216, where the case of McCauley v. Federal Commissioner of Taxation was cited in which Latham, C.J. was recorded as having said:-

> "In my opinion the word "royalty" is properly used for the purpose of describing payments made by a person for the right to enter upon land for the purpose of cutting timber of which he becomes the owner, where those payments are made in relation to the quantity of timber cut or removed. Thus I am of opinion that the moneys received by McCauley were royalties and accordingly were part of his assessable income".

The circumstances in that case were, of course, very different to those in the instant case. There, standing timber was sold, the consideration for which was a payment of 3/- per 100 superficial foot cut. Payment of the £174,600 in the instant case was not merely for the right to go on to the estates and cut the sisal which was there at the time of disposal, but was for the transfer of much wider rights.

22. Mr. Borneman cited the cases of Mackintosh v. Commissioners of Inland Revenue, 14 T.C. 15, and Ogden, (H.M. Inspector of Taxes) v. Medway Cinemas Limited, 18 T.C. 691, in support of his proposition that the payments with which this appeal is concerned, whatever they were called, were of a revenue nature. He commented on what he described as the "fantastic resemblance" between the Mackintosh case and the instant case. The former was another one relating to partnership compensation, in which the deceased partner's estate was to receive £500 quarterly for five years; these payments

were on the particular facts held to be income. Rowlatt, J. says, at page 19, "I think they are treating it not as paying by instalments for a thing they have got once for all, but I think they are treating it as being for the use as they are using it, but that is only to go on for five years". After elaborating this, he says, "That is the best conclusion I can come to upon a question which I am bound to say is a very narrow one". I personally cannot help but doubt whether, borderline as he seems to have regarded the case, he would not have come to a different conclusion had the payments been based on a capital sum, as in the instant case. Mr. Borneman has referred to the previous system of payment by royalty. The catalogue shows that on the outbreak of war, estates were leased for one year at more or less nominal rents and payment of a royalty based on a sliding scale according to grade of sisal produced. In 1943 leases were granted for five years, and after 1948 for two years on similar terms as to rent and royalty. These leases, however, so far as their conditions are known, cannot, I think, be compared with the transaction with which we are dealing. There was no economic rent and no premium, the whole material consideration appearing to be the payment of royalty based on production and price which continued throughout the whole term of the lease without reference to any capital sum, and which would appear to be essentially of an income nature. The circumstances would not, to my mind, justify a suggestion that there was any continuity of system such as would influence the interpretation of the present contract.

23. As to accountancy practice, Mr. Wilkinson, a representative of the firm of chartered accountants employed by the Appellants, explained in evidence why he had entered in the Appellants' books the two sums which made up the payment of £174,600 as revenue expenditure. He said, "I thought it was directly charged .... as a charge against the profits on sisal sold". He said he could not see that sums which related to sisal production could be capitalised or a fixed asset be created. Mr. Borneman has mentioned the cases of Whimster and Company v. Commissioners of Inland Revenue, 12 T.C. 813, and Morgan (H.M. Inspector of Taxes) v. Tate and Lyle Limited, 35 T.C. 367 in which a chartered accountant's evidence was taken and considered on

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30th March, 1957 - continued.

the very point which is now before this Court. In Salmson case, Sir Wilfred Greene, M.R., said :-

> "It seems to me that in the case of patents, as in the case of any other matters, the fundamental question remains in respect to any particular payment: is it capital or is it income?, and that question has to be decided in reference to other subject-matters, upon the particular facts of each case, including in those facts the contractual relationships between the parties. It has been said that the question is one of fact, and it is, when one gets to the bottom of it, an accountancy question. In saying that it is a question of fact, one does not mean that, in deciding it, questions of law may not have to be discussed and decided. For example, the construction of a contract may be one of the elements which must be taken into consideration in deciding that question; there may be cases where the construction of the contract is of itself the really decisive matter in answering the question. In this case the question of the contract and the terms of the contract is of cardinal importance, as I have already endeavoured to indicate in saying what I have said on the question of the cross-appeal".

In my opinion, whilst giving due weight to the evidence of Mr. Wilkinson, in the instant case also the question of the contract and the terms of the contract is of cardinal importance, and that is a matter of law for this Court to decide. I shall be mentioning the matter of capitalisation later.

24. Mr. Borneman's final point is that what was acquired for the £174,600 was stock-in-trade (reference is not here made to the small quantity of cut leaf on the estates for which cash was paid outside the agreement which is before this Court). I understood him to say that in similar circumstances in England he would not be advancing this argument because there the fruits of the land, even if of the type of sisal, form part of the land. A right of occupancy, he alleges, gives a right to occupy but no title to the land itself. He says that what the Appellants bought (if purchase it was), was the mature and immature sisal plants and not the land, because the Appellant did not obtain (and could not obtain) the freehold in the land

and in buying the plants only he was buying stock-in-trade. I am afraid I did not quite follow this argument. I see no real distinction between the right of occupancy and a lease, nor has any been mentioned. The Department of Lands and Mines also appear to recognise the characteristics of a lease, for in their letter of the 20th of December, Condition No.8 makes provision for a 'transfer or sub-lease', and in their letter of the 26th of October they accepted the Appellants as their "future tenant"; moreover, the Land Ordinance and Land Regulations contemplate the possible "transfer, mortgage and underlease" of a right of occupancy. Indeed, in Section 2 of the Land Ordinance, Cap. 113, of the 1947 Laws, (and the certificate of occupancy issued to the Appellants is expressly made subject thereto, and with certain exceptions to the Land Regulations 1948), a right of occupancy is defined as "A title to the use and occupation of land". What is a lease other than that? Bayley, J. in St. Germains v. Williams, 2 B. & C., 220, said "If the owner of land consents by deed that another person shall occupy the land for a certain time, that is a lease"; now, of course, a deed is not always necessary. A thing, whether growing or otherwise, if attached to the land is part of the land so far as I am aware (and I have been referred to no authority to the contrary), whatever tenure it is held on, and whether situate in England or Tanganyika. Does Mr. Borneman argue that if leased in England for 99 or 999 years, it would (if otherwise the terms of the instant contract applied), be stock-in-trade, but if the freehold passed it would not? This, I should have thought, was not the correct test. He referred me to Mohanlal Hargovind v. Central Provinces and Berar Commissioner of Income Tax, 28 annotated T.C. (1949), 287, where the right to pick leaves off trees for wrapping tobacco to make cigarettes was held to be a deductible expense for income tax purposes. There it was said by Lord Greene, "The contracts grant no interest in the land and no interest in the trees or plants themselves". In my opinion, that case is distinguishable by the fact that in the instant case the Appellant obtained a 99 year interest in, inter alia, the land and plants. Mr. Newbold referred me to the case of Stow Bardolph Gravel Company Limited v. Poole (H.M. Inspector of Taxes), 35 T.C. 459, where a company purchased the right or licence for an unlimited time to extract gravel from another's land, but

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without acquiring any interest in the land itself, and it was held to be a capital payment. Sir Raymond Evershed, M.R., at page 471, said that, being a natural deposit under the top soil, it could not become stock-in-trade until after it had been excavated, and that what was acquired was the means of getting it. Is it not in the instant case that what the Appellant purchased or acquired was the means (including the sisal areas and plants) to obtain the leaf which would then become the stock-in-trade? Sir Raymond referred to the case of the Kouri Timber Company Limited v. Commissioner of Income Tax, (1913) A.C. 771, which related to the acquisition of timber rights and quoted Lord Shaw, who said " ..... the transaction under which these timber rights were acquired was not one under which a mere possession of goods by a contract of sale was given to the Appellant company, but was one in which they obtained an interest in, and possession of, land". In the instant case the Appellant also obtained an interest in, and possession of, land. The £174,600 was not paid for the leaf as stock-in-trade, but for part of the unexhausted improvements which constituted the sisal potential (including the plants from which the raw material could be produced) at the date of disposal. Incidentally, Mr. Newbold drew attention to the fact that although Section 14 of the Ordinance does not specify that the deductible 'outgoings and expenses' related only to those of income and not a capital nature, yet that has always been so recognised. In the Stow Bardolph case, Jenkins, L.J., at page 474, mentions this, for in saying that the sums paid were "laid out wholly and exclusively for the purpose of their trade," he goes on to say, "it remains to consider whether these two sums were in the nature of capital outlay or expenditure on revenue account, for in order to be expenses properly deductible they must be of the latter description".

25. Exactly how the sum of £174,600 was arrived at is not in evidence. Mr. Borneman has said that in the sisal potential there was not anything to buy, but it seems to me probable (especially in view of the wording of the Conditions of Sale in the Catalogue) that it was an attempt to capitalise at current market prices the value of estimated leaf production - an uncertain figure (as would be the dentist's profits in Ramsay's case), and this was recognised in the method of payment adopted.

It is to be observed that the payments were not to run throughout the term of the right of occupancy, but, on the conditions existing at the time of the deal, might have been expected to cease after some 7 or 8 years although in fact the whole amount was paid off in 2 years owing to the rise in the price of sisal. In the Ramsay case, Lord Wright said :-

> "It is a case in which a capital lump sum has been stipulated as the price of a piece of property, and it is none the less so because the payment of that sum is to be made by instalments, instalments at certain specific periods, no doubt, but not instalments of a fixed price. It is none the less, in my judgment, a capital sum because in the working out of the transaction, and in the discharge of that capital sum, the Vendor according to the terms of the agreement may have to be content with a lesser amount than £15,000. The £15,000 is not an otiose figure; it is a figure which permeates the whole of the contract, and upon which the whole contract depends".

Again, in the same case, he said:-

> "I cannot see why a creditor who has sold property for a particular price should not, in discharge of that price, agree to accept a fluctuating sum if, as may be the case, and no doubt was the case here, there are sufficient reasons of convenience or other considerations which make it desirable to adopt that method of payment".

To my mind, the payments in the instant case were instalments (though variable and uncertain) of the capital sum of £174,600 and were not therefore deductible for purposes of income tax, and I dismiss the appeal with costs to the Respondent.

Sgd. E.D.W. Crawshaw,

JUDGE.

30.3.57.

Thornton for Bechgaard & Borneman for Appellants.

Samuels (for Newbold) for Respondents.

In the High Court of Tanganyika.

No.11.

Decree.

18th April, 1957.

No. 11.

DECREE.

IN HER MAJESTY'S COURT OF TANGANYIKA
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPEALS NOS.19 & 20 of 1955

RALLI ESTATES LIMITED — Appellants

versus

THE COMMISSIONER OF INCOME TAX — Respondent

DECREE IN APPEALS

(Issued under Rules 56 and 21 of Eastern African Court of Appeal Rules, 1954)

These Appeals coming on this day for hearing and final disposal before the Honourable Mr.Justice Crawshaw in the presence of R.E. Borneman, Esq., Q.C., and K. Bechgaard, Esq., Advocates for the Appellants and C.D. Newbold, Esq., Advocate for the Respondent.

IT IS HEREBY ORDERED AND DECREED that :-

1. The appeals be and are hereby dismissed.

2. The Appellants do pay to the Respondent the costs of these appeals to be taxed by the Taxing Officer.

Given under my hand and the Seal of the Court this 18th day of April, 1957.

Issued & Signed: /5/57.

REGISTRAR.

/CHM.

No. 12.

In the Court of Appeal for Eastern Africa

No.12.

Memorandum of Appeal.

25th July, 1957.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

RALLI ESTATES LIMITED Appellants

and

THE COMMISSIONER OF INCOME TAX Respondent

(Appeal from the Judgment and Decree of the High Court of Tanganyika at Dar-es-Salaam (Mr.Justice Crawshaw) dated the 18th day of April, 1957).

MEMORANDUM OF APPEAL

RALLI ESTATES LIMITED, the Appellants above-named, appeal to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above-named on the following grounds :-

1. That for the purpose of ascertaining the total income of the Appellants for the years in question the payments totalling £174,000 (sic) were deductible as being outgoings and expenses wholly and exclusively incurred by the Appellants in the production of the Appellants' income.

2. That the learned Judge erred in failing to hold that the payments totalling £174,000 (sic) were allowable deduction under the provisions of Section 14 of the East African Income Tax (Management) Act, 1952, and in particular:-

   (a) the learned Judge erred in failing to hold that the said payments were truly in the nature of royalties paid by reference to quantum of user;

   (b) in the alternative to the above, the learned Judge erred in failing to hold that the money paid was paid for the right to exploit the sisal potential;

   (c) in the alternative to the above, the learned Judge erred in failing to hold that in any event the said payments were deductible as being essentially of a revenue nature;

In the Court of Appeal for Eastern Africa

No.12.

Memorandum of Appeal.

25th July, 1957 - continued.

(d) in the alternative to the above, the learned Judge erred in failing to hold that the said payments were deductible in ascertaining total income in accordance with ordinary commercial principles and in accordance with the ordinary principles of commercial accountancy;

(e) in the alternative to the above, the learned Judge erred in failing to hold that the said payments represented cost to the Appellants of stock-in-trade of their business.

3. That this Appeal is brought with the leave of Her Majesty's High Court of Tanganyika which was granted on 18th April, 1957.

4. By order of this Honourable Court, dated 21st June, 1957, the time for the lodging of this Appeal has been extended till the 26th July, 1957.

The Appellants therefore pray :-

(a) That the decision of the High Court be reversed; and

(b) For such further and other relief as this Honourable Court may see fit to grant, together with the costs of this Appeal and of the Appeals in the Court below.

DATED at Nairobi this 25th day of July, 1957.

K. BECHGAARD,

Advocate for Appellants.

Filed by:-

K. Bechgaard,
Advocate,
Lugard House,
Lugard Avenue,
Nairobi.

Served upon:-

The Legal Secretary,
East Africa High Commission,
Queensway,
Nairobi.

No. 13.

In the Court of Appeal for Eastern Africa

No.13.

Notes of Argument taken by the President

14th to 16th April, 1958.

NOTES OF ARGUMENT TAKEN BY THE PRESIDENT

NOTES TAKEN BY THE HON. THE PRESIDENT - SIR KENNETH O'CONNOR.

14.4.58. Coram: O'Connor P.
Briggs, V-P.
Forbes, J.A.

Borneman, Q.C., Bechgaard with him, for Appellant.

Hooton, Livingstone with him, for Respondent.

Borneman:

Income Tax charged with reference to years of income - relative years 1951, 1952.

Figures not in dispute.

1951. Plaintiffs assessed. 229, 692.

1952. £496,511 odd.

Claim is to deduct from 1951 £ 94,326
1952 84,
Total: £174,600

Our Income Tax is an Income Tax Management Act and purports to tax income only.

Whether a sum of capital or income.

Deduction from gross income if of income nature not if of capital nature.

Whole issue is whether sum which we wish to be deducted is a proper revenue expense.

Submit the £174,600 is a revenue expense and a charge against property.

Words similar.

In U.K. you deduct (s.137A 1952 Act).

In Tanganyika you deduct .....

s.8 general charge.

(a) Trade

s.14(1) (paragraphs (a)- (o) not relevant). General words of s.14(1).

Usual expenses of trade - money paid for user of assets, e.g. office rent: money paid for hire of assets - salaries - light etc; is deductible. So is any money paid for the right to use assets.

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14th to 16th April, 1958 - continued.

Money paid for user of assets is a revenue charge.

e.g. royalties - root meaning in coal mines. Taken on a larger meaning - copyright - for user of someone's asset.

Price paid for a right to use.

Must be revenue expense if asset used by trader in the course of his trade.

This was a revenue expense as a sum paid for the right to use the potential of this land to grow sisal. Called by Government 'royalties' and so remained.

But label does not matter except that it is an indication of what prima facie parties intended.

Not conclusive but indicative.

Principle:

(1) Sum paid for the user of an asset is a revenue expense.
(2) Whatever label is put on it, it is duty of the Court to say what it is.

To Court:

Position would not be different if Government had given a freehold title.

Borneman continues:

'Royalties' were at a later stage called 'purchase moneys' but it does not matter what the label was.

Sisal land passed into possession of Ralli Estates Ltd., for a premium, a rent and for a royalty which was geared to the amount of sisal produced, i.e. to the quantum of user of the land to produce sisal.

Won't refer to judgment.

I am not here to complain about the principles which Judge accepted. My complaint about Crawshaw's judgment is that he failed to apply the principles he accepted. Side-tracked by two particular passages read and taken out of their contexts.

Line is fine but when drawn is clear.

We fall on the income side of the line.

Facts first

2 estates - Lanconi
Mjesani.

Odd 6,000 acres.

Original property of Company in which Company was held by Germans and Ralli Bros. were selling agents.

War - passed to Custodian.

Ralli's were agents.

In 1940 British Board appointed. Ralli's still Managers. Till 1948 Ralli's managed.

30.6.48. Enemy Properties Disposal Ordinance, 1948, passed.

Land passed to Custodian as agent for Tanganyika Government. p.34.

The two estates became the property of the Tanganyika Government as from the 1/7/48.

They permitted persons to manage and Ralli Bros. were appointed Managers of Mjesani and Lanconi.

1/1/51. The two estates passed into the possession of the Appellant Company as a result of the transaction which is before you: on terms that the Company took a right of occupancy. Paid rent for right of occupancy for 99 years in consideration for a premium for the unexhausted improvements and agreed to pay a royalty for the sisal fibre produced.

3 things: (1) rent
(2) premium
(3) royalties

We have not claimed premium which we might.

Crown says this is (1) pre-determined (2) a capital item.

I say it is neither.

Land Tenure Ordinance. Cap.113, p.1486, s.2 'unexhausted improvement'.

You take any point of time when man goes into possession - 'right of occupancy'.

'title to the use and occupation of land'.

s.7.

s.13(b) 'unexhausted improvements existing at the date of occupation'. Premium was paid for this.

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s.14. p.1491 first proviso.

Rent for a right of occupancy is a rent based on unimproved value. So rent for right of occupancy is always low. You pay a rent on the unimproved value but when you go in you pay for the capital assets which are there (unexhausted improvements). We paid the premium for that, predetermined and unalterable. We pay the royalty not predetermined or unalterable month by month as we produce sisal fibre and then only for the use of the sisal potential.

History:

Record p.8.

In June 1948 Custodian prepared a Memorandum as proposal for the disposal of enemy sisal estates.

'Premium will be fixed for the value of the unexhausted improvements'.

March 1950. Government told Tanganyika Sisal Board what the basis would be "base valuation of each estate on its potential production".

14.3.50. Applications invited.

Last paragraph.

Indication that there was going to be a rent, a premium for unexhausted improvements and a Royalty. Word accepted by industry which knew what it meant.

'Royalty' is inevitably geared to a quantum of future user.

Land Settlement Order 4/1950 had a foreword.

p.10. Foreword.

'Royalties' were payable to the Custodian of Enemy Properties.

At the date when this document was issued persons knew what 'Royalties' meant.

For 10 years it was accepted in the industry that 'Royalty' in the industry connoted a sum of money according to production. Both parties went into the transaction knowing what the term meant. Important. They knew what they were doing.

The Government thought this was the thing to do and that continued throughout. The meaning of 'royalty' went right through to the end.

Royalties geared (1) to production; and (2) to current market prices.

p.12. Catalogue.

Premium fixed on inventories.

Method of Disposal.

p.13. Conditions of Sale. Vital.

'threefold consideration'.

Submit this shows a continuation of the old system by including as part of consideration for the transfer payment of a royalty geared to the quantum of user until a certain amount is paid.

To Court:

Royalty is related to unexhausted improvements but the premium is due to the assets at the date of the entry into possession.

One of the considerations was periodical sums of money geared to user.

That is all I need.

p.13/14.Basis of this case.

Addressed to Ralli Bros.

Paragraph 2.

The 'balance due on royalty' i.e., that it is described as part of the 'total net capital value' is unimportant. This was never more than a label. When it came to be paid it had its own characteristic.

Even if it were part of the purchase price it would not matter from my point of view.

p.15.

(1) The Royalty is geared to user.
(2) It depends on imponderables as at the time of writing.

The £174,600 was a ceiling only. It was never an amount to be paid.

At this date no one could say how much royalty would be payable.

Price and production were imponderables. If the price had remained at £70 we should only have paid £19,000.

We might never have reached the tonnage limit of 19,397 tons.

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The Royalty was based on the user of the land to produce sisal fibre - i.e. sisal potential.

The Royalty is not geared to the quantum of sisal on the land or to the quantum of sisal to be produced, but to the production of 'line fibre' - not leaf.

At the date of the contract no one knew how much should be paid for Royalty, but what everyone knew is that it should turn on future user.

Forbes: p.13. 'estimated leaf potential on the estate at the time of disposal'. Does that mean later planting?

Borneman: There was a slight shifting of ground by Government later. The royalty was payable on fibre tonnage, not leaf tonnage.

Royalty only went on for two years because price of sisal rocketed.

Royalty was from nil to £174,000. (sic)

To Court:

I do not think that we could have rooted out sisal and started planting pineapples. It may be so but I do not think so.

At the date of the contract no one could say what would be paid by way of royalty.

p.16. para.3. 'In accordance with the conditions of sale .....'

This is an offer which we accepted and paid 10%. This is a concluded contract.

We paid £58,000 odd on the 16th November, 1950.

Letter of the 20th December, 1950.

Extraordinary document.

Looks as if under the Agreement which we were proposing to make or have made no tax will be payable. Seems that the Income Tax authorities were consulted before this letter was sent. p.198/9.

This shows that the submission I make on the other letters is correct.

Change of label does not change position. 'Royalty' still runs through this contract. Remarkable document.

'receipt whereof is hereby acknowledged'. Tie between two documents. Second one is pursuant to the earlier document.

p.19. 'Schedule hereto' - figures are the same as before. p.20-22.

pp.195-203/4. Letters

p.199. Income Tax Department.

It makes no difference. If it was it was naive and should not be taken notice of by a Court of law.

p.192. Certificate of Occupancy dated 4 years later.

To Court:

Ralli Estates became entitled to commence business on the 21.12.50. Contract must be interpreted on the basis of the earlier documents.

p.17/18 on.

The letter of the 20th December refers to a deposit already made.

Briggs: Have we not to construe the document of the 20th December?

Borneman: I do not accept that but I do not mind.

p.209. To deduct F.O.B. expenses was in accord with the ordinary principles of commercial accountancy.

p.187. Subsidiary company will be formed.

That is all the relevant documents.

Issue turns on what the parties intended and the words used.

Transaction resulted in a grant of a right of occupancy over public lands deemed to be undeveloped.

s.6(b) as amended in 1947.
s.13(b) sale of unexhausted improvements and (3) 19,397 tons.

(To Court. Forbes:

That is not standing crops. That is not the sisal leaf. It is fibre tonnage.

There was no evidence of how the value was arrived at).

Forbes. p.8., p.13.

Borneman. I don't know whether the premium is related to the existing leaf.

"leaf potential".

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Geared to what will happen in the future.

Submit .....

Forbes refers to p.38 at X.

Adjourned to 2.30.

2.30 p.m. Bench and Bar as before.

Borneman continues:

Assumptions on the facts of this case.

(1) The payments in issue were understood by both parties to be payments in the nature of royalties; but fact that you put a label on anything is not conclusive.

(2) Both parties intended by the use of the word 'royalty' or "balance of unpaid purchase price" to indicate payments on a sliding scale according to the quantum of sisal produced.

(3) On the facts the payments were based on user; "for use as Rallis were using it" as the Judge said. They were payments which rose and fell with the chances of business.

(4) Even if it be assumed that the £174,600 was a part of a purchase price, the monthly payments which made it up are still on the facts and the authorities income payments which are deductible.

The fact that the £174,000 (sic) may look like a lump sum makes no difference if made up by reference to a quantum of user.

(5) There was no pre-determined global sum and standing at the time the contract was made no-one could say how much would be paid.

(6) There is no provision for the payment of any global or pre-determined sum in default of the payment of any instalment.

Paterson Engineering Co. v. Duff, 25 T.C. 43. p.43 (2) and (3) Question of fact. Court not bound by provisions of the 2nd agreement.

See what the substance is.

Ogden v. Medway Cinemas, 18 T.C. 691. p. 695 'in accordance with the substance of the matter'.

p.696. 'a revenue payment for the use during a certain period of certain valuable things and rights'.

a pre-determined sum.

Constantinesco v. R. 11 T.C. 730. 42 T.L.R., 43 T.L.R. 727. Sum which has marks of a capital sum was held to be royalties in respect of user.

Briggs: Patent remained in Constantinesco.

That does not matter.

p.740. 'Now what evidence'

An aggregation of the sums paid for user.

p.742, bottom.
p.743.
p.745.
p.746.

Submit it is an income payment if it is geared to use of an asset.

C.I.R. v. Ramsey. 20 T.C. 79.

Primary price - pre-determined. There was a predetermined primary price which could be sued for as a primary price.

p.80. paragraph 6.
p.81(v)

p.92. No antecedent debt in this case which has to be paid. Might be £9,000 or £19,000.

p. 99.
p.100. Distinguish. We never became liable to pay £174,600.

There is no primary obligation to pay this or any other sum.

Distinguishable on that ground.

Ramsay, Ledgard etc. are very special cases. Not followed by superior Courts.

C.I.R. v. Hogarth. 23 Tax C. 491.

p.499. Now, there is a clear difference.
p.500.
p.501. 'permeate' and 'dominate'.

If you merely have a ceiling you have a Hogarth not a Ramsay decision.

No sisal no payments.

Jones v. C.I.R. 7 T.C. 310.

p.311.
p.312. 'By Clause 2 of the Indenture ......'
314
315. 'rose or fell with the chances of an

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14th to 16th April, 1958 - continued.

income. I think that when a man does that, he takes an income'.

Nethersole v. Withers. 28 T.C. 501, 512. "If a lump sum is arrived at by reference to an anticipated quantum of user it is income".

Mackintosh v. C.I.R. 14 T.C.15.

Quarterly payments were income.

Pre-determined but an income payment.

p.19. 'But looking at ..... '
'paying for the use as they are using it'.

D. 'Not handled is a purchase by instalments'.

Racecourse Betting Control Board v. Wild. 22 T.C. 182 (1930) 4 A.E.R. 407.

p.182
p.188.

Annual payment was geared to the cost of the capital asset to the payee but was nevertheless held to be income.

C.I.R. v. Rustproof Metal Window Co. 29 T.C. 243. (1947) 2 All E.R. 455.

Held: That the £3,000 was an income receipt.

p.266. 'Counsel for the Company called attention .....'
p.267
p.268. "anticipated quantum of user".

Submit that so long as one stands at the time of the contract there can only be one conclusion.

10 a.m. tomorrow.

K.O'C.
14/4.

15.4.58. Bench and Bar as before.

Borneman continues:

Won't refer in detail to pp.47-58.

Judge accepted principles of law but did not apply them.

p. 58. Newbold's argument on ss. 91, 92.

Hooton. I am not taking that point.

Borneman:

p. 58. 'It is to be observed ....." Right.

p. 59. 'to find out what the words really mean'

Correct. That is the duty of the Court.

p. 59, 60.

Mallaby-Deely, 23 T.C. 153.

Based on the U.K. system of the 7-year covenant. He had previously agreed to pay a capital sum and changed this to a 7-year covenant.

p.166. 'But it is said .....'

'what the true legal position was'.

p.167. top.

p.169. 'It was suggested .....'

To B:

The letter of the 20th December ties itself to what has gone before. It does not stand on its own.

It could be taken to supersede what went before.

p.17. Letter of the 20th December.

Effect is "we have had previous negotiation which was accepted and money was paid under it". You must look back to interpret the words used.

I do not agree that the Government was entitled to change its ground. Government has entered into an obligation and accepted money under one basis and changes its basis.

When Government accepted the 10% and the 50% it would have been liable to an action for specific performance.

We paid £158,000 on the 16.11.50.

On the 26/10 or thereabouts.

The rules are not the same when a third party comes in and claims. This has to be looked at from the top, looking at the whole thing when the rights of the third party, the crown, comes in. You must not only look at the letter of the 20th December, but must satisfy yourself as to the true nature of the transaction in order to discover its substance. Court is to discover the substance, but for the purpose of discovering what the nature of the transaction is the previous negotiations must be looked at.

Judgment p. 61.
pp.61/2.
pp.62/63.

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14th to 16th April, 1958 - continued.

This is a sale of the whole sub-strata of property in consideration of annual payment.

It is such a sale because there is no pre-determined sum which must be paid.

Leaf potential is different from sisal potential.

p. 63.

The Court would have before it evidence as to how the tonnage figure was fixed.

Forbes:

This was an estimate of future production of fibre from the sisal mature and immature at the time.

Borneman:

I will pass on and waste no more time on this.

pp.63/4.
pp.64/65.
pp.66/67. . 'were revenue in nature' this is my main argument.

Jones:

There was a fixed sum first payable.

There was a pre-determined royalty. Rose and fell.

Further sums not pre-determined are income - turned on vagaries of production.

p. 67. Hogarth more similar than Ramsay.

p. 68. 'They might have been liable to pay the full £174,000'. (sic)

That is wrong. It is on this basis that the Judge relies on Ramsay.

In the Ramsay case the £15,000 was unalterable and a fixed pre-determined sum.

The Judge says it might have been an implied term. But if the estates had been destroyed by misadventure, we could not have been called on to pay anything. Unless you can find a pre-determined sum which you can sue for you are nowhere near Ramsay.

If that is wrong the whole of the judgment falls to the ground.

pp.68/9. I rely on that.

p. 69. 'the premium ..... assets'.

Wrong.

Cap.113.

s.13(b) s.16.

Right of occupancy is highest title to land in Tanganyika.

Unexhausted improvements stand outside the land as chattels.

I do not accept that the royalty was part of the consideration for unexhausted improvements. There was no evidence of it.

That lump sum as part of a capital valuation begs question.

p. 71. 'based on a capital sum as in the instant case' begs the question. There is no escape from Mackintosh's case except by starting from assumption that this is a capital sum.

p. 71. Judge accepts that the previous system was one of a payment of royalty based on production which would be of an income nature.

In this case the payment was based on production and therefore was essentially of an income nature.

'Without reference to a capital sum'. He meant a pre-determined sum.

pp.71/2.

It is indicative that the accounts are in accordance with the principles of commercial accounting.

Evidence was called.

Crown could have called evidence contra.

Judgment accepts all the principles but it fails to apply them.

Bechgaard; On stock-in-trade.

Ground of appeal 2(e) p.B.

We bought either £174,600 or 19,000 tons of line fibre to be processed as and when produced.

'Goods' in the Sale of Goods Ordinance includes.

Important feature is the split-up of the consideration.

Stock-in-trade cases divided into 2 groups - mining and agricultural.

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Mining cases no assistance - deal with wasting assets.

Agricultural cases. Kauri Timber case 1913, A.C.771 doesn't apply s.14(i)(h) E.A. Income Tax (M) Act.

Land itself and the unexhausted improvements may be in separate ownership.

Mtoro bin Mwamba 20 E.A.C.A.108. p.117. Distinguish ownership of the trees planted and of the soil.

Division of ownership is possible under the Land Tenure Ordinance.

This subject matter is on sale severable and therefore comes within the definition of 'goods'.

C.I.R. v. Pilcher, 31 T.C. 314.

p.321. 'There is not anything said'.

Distinguish.

p.322, 8. 'That is what the Court says'

331. 'It is true .....

'Regard must be had to the contract

We did the transaction in a different way. We paid separately for the land and for the stock-in-trade. Price was to be determined as and when produced.

p.332.

333, paragraph 3. Sisal might be fructus industriales.

p.335. He could have bought the cherries separately from the land. That is what we claim to have done.

Adjourned for 10 minutes.

2.30 p.m. Bench and Bar as before.

Hooton:

(Told that we did not require to hear him on the 'stock-in-trade' point).

Borneman's six premises. Those did not reflect the facts of this case.

(p.11. Notes).

Borneman has assumed throughout that there is an identifiable sum paid for sisal potential which is related only to the future.

p.13. Foreword to Catalogue referred to in advertisement.

'conditions of sale'.

'the premium and royalty will be related to the value of the unexhausted improvements on the land including leaf, buildings, machinery and equipment.

It is not possible to say what was paid for sisal potential alone.

'related to the estimated leaf potential on the estate'.

Royalty and premium are regarded together and are payable for leaf, buildings, machinery and equipment.

'estimated leaf potential on the estate at the time of disposal'. That is what they are paying for.

p.14. paragraphs 3 and 4.

'Royalty will be charged - based on - not payment for.

'whole balance' is balance of purchase price.

This merely indicates a method of payment.

p.14, bottom. 'Total net capital value'. 'Balance of net capital value'.

What is being paid for by premium and royalty lumped together is a number of elements of which sisal potential is one.

To B:

p.38.

p.17.

When the Land Authorities came to draw up a formal offer of right of occupancy they applied themselves with care to the terms.

Quite proper to consult Income Tax Department.

There is nothing in the letter of the 30/9 that what was purchased was something exclusively in futuro.

p.196.

The use of the word 'purchase moneys' is never queried.

'purchase consideration' includes royalty.

pp.198/9.

p.17. Nothing extraordinary - considered terms of bargain.

No separation between elements for which money paid. This was purchase money for a capital asset.

What was it which was acquired by the Appellant?

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14th to 16th April, 1958 - continued.

Borneman has contended for user in futuro.

Is it not. (? It is not).

Atherton v. British Insulated & Helsby Cables Ltd., 10 T.C. 155, 192, 3.

Ralli Bros. intended to enter sisal production trade.

Borneman: 'I agree'.

Definition of user:

British Salmson 22 T.C. 29, 39.

'Now those rights .....'

A user of land is only such a thing as disentitles the owner to complain of trespass or damage.

Mohanlal Hargovind v. C.I.T. Berar (1949) 2 All E.R. 652.

Typical user of land.

654E. Contracts grant no interest in land and no interest in the trees or plants themselves.

This case concerns an interest in land exceeding a right of user.

Cap. 113. s.2. 'right of occupancy'

s.18. Occupier shall have exclusive right to the land.

s.10. Governor's rights restricted by statute.

s.12.

This is an estate in land which can pass on death.

Cap.116, s.2. 'Lease' includes certificate of occupancy.

s.44(1)(b). Right of occupancy vests a legal title in the land. It is not mere user.

Constantinesco's case, p.739.

Expression 'royalty' is inconclusive.

The short leases - royalty used in different sense.

No covenant in this lease to hand back the land in its original state. Except for implied contract to go on with sisal till royalty paid they could change user.

p.8. Disposal of parcels of land.

p.10/11. Foreword to Catalogue, 'leasehold basis'.

bottom. Offering going concerns.

What they were being offered was an interest in land which they are to buy by a premium and a royalty.

Part of the purchase price is related to the potential at the time you buy it.

p.186. 'with complete consolidation' - he is getting the land.

Acts of ownership.

p.187. "to own and work the estates"

" 192. 'ownership of those estates'

" 185. 'Long term leases'

" 14. 'Long agricultural leases of 99 years' full value - implies in other estates full value will be paid by premium and royalty.

p.17. This is the most reliable evidence as to the true nature of this arrangement.

'Full purchase monies' - in respect of the said 'land' - must include sisal potential.

'The balance of such purchase monies shall be paid by monthly instalments'.

Standing at the beginning everyone knew that there was sisal which they could cut and dispose of at once.

p.20. Only limitation is in paragraph 3. Conditions they could grow anything they liked on any spare land.

p.21. Prohibition of sub-leasing implies ability to sub-lease.

Ralli Bros. could at this date have resiled and recovered what they had paid.

p.19. 'If you accept this offer .....'

They did not resile, they accepted.

Judge never suggested that purchase money was an inaccurate description.

p.200. 'future leasehold titles'.

'section for advances' not a mere right of user.

p.202. paragraph 6. 'balance of the purchase monies'.

On those documents you can't find that all he has is a bare user of the sisal potential. They have an interest in land - an income-producing asset.

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This is quite different to the interest under discussion in the Racecourse Betting Control case, 22 T.C. 182 (see p.183(c)(d)). Entirely different circumstances.

C.I.R. v. Adam, 14 T.C. 34, 42.

(1) Practically a permanent provision of land.

Mallaby Deely's case, 23 T.C. 152. 166.

'The distinction

'To take a simple case .....'

There is an undertaking to pay a capital sum and there is a capital obligation.

What has been done here is to provide two alternative means of making payment.

If you are satisfied that there is a capital obligation it does not matter how that may change or abate.

Part of it is to be paid in the alternative.

Although in certain circumstances that sum may abate, if those circumstances do not take place that sum (Sh.3,492,000/-) is a debt.

It is not the law that if there is no pre-determined sum, it must be revenue.

Ramsay's case similar.

Submit that if the alternative method of payment was no longer open there would still be that debt: You might not get specific performance till 99 years had run. The money would still be payable if for some reason they produced no sisal.

There is an obligation to pay £170,000 (sic) which may abate.

p.14. 'Balance due on royalty'.

Nethersole's Case. 28 T.C. 511.

Depended on imponderables. What was purchased.

I agree that in some circumstances a pre-determined sum is important, but it is only a sign-post.

p.509. 'The nature of the rights' - often the deciding factor - a great deal more than were covered by a licence.

C.I.R. v Hogarth, 23 T.C.511.

No pre-determined sum.

Decided revenue payment - why?

p.499. 'And lastly .....'

Reason for which case was decided - not absence of a pre-determined sum.

Constantinesco's case was reviewed in Nethersole at p.510. 'We will now consider ..... '

Property here does not come back intact.

Growing crops would not come back intact.

Covenant for soil fertility p.21(d)

Nethersole p.511.

Here the price is £x.

But in the alternative you can pay £y.

That can't alter the nature of the transaction itself.

C.I.R. v. Ramsay, 20 T.C. 79. p.92, top.

Whatever be the method of payment here the sums were 'payments of money due as capital'.

p.93. 'For instance ..... '

Capital sum notwithstanding it was described as a royalty.

Though this rose and fell with the chances of business it was of its essence income and distinct.

Jones. Lord Wright says not a case of universal application.

There isn't a pre-determined sum in Ramsay's case - either - it is subject to increase or diminution.

Ramsay only refers to a 'primary price'.

If Ralli Bros. ceased to produce sisal, they would be in breach of contract.

p. 9.
p.186. paragraph 2.
p.186. paragraph 3. State your plans.

What we have here is a provision that the purchase money may be increased or diminished - no pre-determined sum.

Minister of National Revenue v C. Spooner (1933) A.C. 684. 10% No pre-determined sum.

Submit. This sum was part of something paid as capital. It was not paid for user or alone for a potential in futuro: it was paid for an existing interest in land - a capital payment.

Adjourned 10.30 a.m. K. O'C. 15/4.

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No.13.

Notes of Argument taken by the President.

14th to 16th April, 1958 - continued.

16.4.58. Bench and Bar as before.

Borneman in reply:

Hooton's points - 16.

(1) Cannot be said on the documents how much for sisal potential alone. But you can draw inference as to what was payable for sisal potential.

Letter of 30th September. Figure there set out for royalty was for user, exploitation of sisal potential. Same figure in the letter of 20/12 was for the same consideration.

(2) Issues must be judged by standing at point of time of disposal, whether at September or December.

I agree.

It is wrong to look at the position ex post facto.

(3) The payment of £174,600 was based on I agree. I said 'geared to' production.

(4) The £174,600 was clearly based on an assumption of £9 per ton. It shows also that it was based on 'fibre tonnage' and was for use "as it was used" (Rowlatt J.). Shows this is not a case where the sale price was fixed at the beginning, price to be paid by instalments. It showed that monthly sums were to be paid geared to user depending on the rise and fall of the chances of business. This is a vital distinction.

Rustproof Metal Windows, 29 T.C. 268. "If lump sum is arrived at by reference to some anticipated quantum of user it will normally be income in the hands of the recipient". A fortiori if the sum is pre-determined.

(5) Use of word 'royalty' is not conclusive. I agree, but its use indicates that it was geared to user.

(6) Hooton said - the right of occupancy does confer an interest in land. That really went to the stock-in-trade point. I do not accept that it confers an interest in land, but let it be assumed - on the basis of these facts it is being paid for by variable sums of money month by month out of trading receipts.

(7) In the letter of the 30/9 there is note in paragraph 2 about the small estates - 'full value will be paid as premium ..... '

There is no note of Carson's evidence in chief.

Carson said that there was no practical sisal potential on these estates.

(Told that there seems to be a mistake in copying; submits he wishes we should look it up in the original).

(8) Betting and Racecourse case enunciates no new principle.

I agree, it is merely an illustration of acceptance of principle that a sum paid to meet capital expenditure may be income.

Hooton didn't refer to Ogden v Medway Cinemas, 18 T.C. 691 which is very strong against him.

Fixed capital sum for goodwill; but held a revenue payment.

'This is a revenue payment for the use during a certain period of certain valuable things and rights.

(9) Spooner's case.

Comments:

(1) It was a case concerned with whether a sum of money to which the recipient was not entitled (only entitled to oil) was annual profits or gains. Not a commercial case.

(2) No reasons given in the judgment. Strong onus under the Canadian Act on an appellant.

(3) Distinction - Spooner's case was a case where land was sold but cash was not reserved but part of the land - i.e. 10% of the oil.
Taking the money instead was a separate transaction.
Held not to be an annual profit. But if she had reserved cash it would have been.

Marine Turbine Co., is an excess profits case and is concerned with whether liquidator is carrying on a trade or not.

Dictum obiter
12 T.C. 174, 180. Judge's mind was not directed to this point because not relevant in that case.

(4) Spooner's case never since relied on

(10) The agreement provided two alternative

In the Court of Appeal for Eastern Africa.

No.13.

Notes of Argument taken by the President.

14th to 16th April, 1958 - continued.

methods of payment - £174,600 down or royalties. Wrong. There was only one method prescribed, "by instalments month by month".

(11) Hooton said if what is bought is a capital asset and a capital price is paid for it, it matters not if that abates.

But to talk on a capital price is to beg question. A capital price can only mean payable by instalments and that is the whole issue.

(12) Hooton said that the sum of £174,600 is a sum which was a debt due under the contract.

Quite wrong. There never was such a debt on these documents. When could it be sued for? Hooton said that in law the debt would become due if Rallis could not pay or produced no sisal. That is wrong. There was never any time at which the Government could have issued a writ for money due. Whether or not we were bound to carry on growing sisal, I do not mind. If that had become impossible there would have been no such obligation.

User was as the Minister might direct. If we had ceased to grow sisal the claim at the highest would have to be for damages for breach of contract, related to what damages Government had suffered. Even if it were £174,000 (sic) mathematically, it would not be for money due under the contract.

But p.19(vi). Revocation the indicated remedy.

The remedy would be forfeiture of right of occupancy.

Accepted by Government that we pay as we go for use as using.

(13) Hooton said no case used phrase 'pre-determined sum'. I agree. I used it as shorthand. In early cases the test was taken as "Is there an antecedent debt".

Ramsay 20 T.C.93.

Theory of antecedent debt has to a certain extent been watered down. So I used phrase 'predetermined'. I say that on the authorities in a case of this kind the theory of the antecedent debt still stands: it is not watered down for this type of case.

"Before you are on the capital road you must be able to say that standing at the point of time of the contract there is a lump sum to pay which at that date can be calculated with precision".

"If there is not such a lump sum at the beginning then the amounts paid in liquidation of the sum are income and not capital".

If there is such a lump sum - pre-determined sum - it may be payable by instalments which are income.

Rustproof Metal Window case.

If it is arrived at by reference to quantum of user it will normally be income in the hand of the recipient.

"Satisfaction" monies quantum of which rises or falls with the prices of business.

(14) Hooton referred to Nethersole. p.21(d).

(15) Ramsay's case.

Reliance on Ramsay involves that the £174,600 (i) is a pre-determined sum and (ii) can be sued for at any time if the instalments were not paid.

True basis is in the judgments of Romer and Green L.J.J.

Hogarth's case closer.

23 T.C., 491, 499.

In this case the payments are month by month and pay as we go.

p.501. Ramsay distinguished. Applicable here.

(16) Hooton said if Rallis ceased to produce sisal they would be in breach of contract.

We might or might not be. I do not mind. Assume that we should. Then Company's claim would be for damages only. Damages for breach of contract, not as a sum due under it.

Conclusion inevitable - one cannot find any ground on which on a fair construction this case lies on the capital side of the line - money paid for use as using is indelibly stamped with character of income. Judge accepted our principles but failed to apply them.

See my six premises which still stand.

Recipient and payer.

Very rarely where a sum of money has one character in the hands of the payer and another in the hands of the recipient.

What chance could a recipient other than the Government have of avoiding taxation on an income basis?

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Notes of Argument taken by the President.

14th to 16th April, 1958 - continued.

Appeal should be allowed.

C.A.V. K. O'C. 16/4/58.

Agreed that there should be an order for two Counsel.

22.5.58. Bench as before.

A.B. Patel holds appellants brief.

Hooton for Respondent.

Judgments read. Appeal dismissed with costs.

Certificate for two Counsel.

K.K. O'CONNOR.
P.

No.14.

Notes of Argument taken by the Vice-President.

14th to 16th April, 1958.

No. 14.

NOTES OF ARGUMENT TAKEN BY THE VICE-PRESIDENT

14.4.58. Coram: O'Connor P.
Briggs, V-P.
Forbes, J.A.

Borneman, Q.C., Bechgaard with him, for Appellant.

Hooton, Livingstone with him, for Respondent.

Borneman: Years of Income 1951 and 1952.

Figures £229,692 £496,511 assessed profits.

Deductions sought 94,326 80,274 = £174,600

E.A. Management Act - "a tax on income"

Question - was the deduction of a capital or income nature.

i.e. Was it a proper revenue expense?

We say it was - on construction.

Moneys "wholly and exclusively incurred in the production of the income".

s. 8(1) E.A. Act

"Trader" - production of sisal.

s.14.
s.15.

This was money "paid for the user of assets", as rent. Any money paid for "hire of an asset".

Typical form of this is a "Royalty" - price paid for a right to use - but the income is only a prima facie indication - Court must say what the true nature of payment was.

I do not rely on the difference between a 99 year lease and a freehold.

Part of a purchase price may always be a revenue payment.

Sisal land handed to Appellants for rent, premium and royalty - the royalty geared to quantum of sisal to be produced.

Court below accepted all the principles for which I contend, but failed to apply them. Acted on two dicta taken out of context.

Facts.

Lanconi and Mjesani Estates, originally German owned. Ralli Brothers Limited were selling agents and large creditors - mortgagees. Vested in Custodian. Rallis appointed his agents. 1940 - enemy states removed.

30.6.1948. Enemy Properties (Disposal) Ordinance.

Estates again made "enemy" and passed to Government as its property, as on 1.7.48. Rallis again managers till 1951, when Appellants came into possession.

Terms. Right of occupancy for 99 years at rent - premium for unexhausted improvements - royalty on sisal fibre to be produced.

Rent - deductible.

Premium - not claimed, though doubtful.

Royalties - in issue.

Crown say - part of pre-determined capital price.

Tanganyika Land Tenure Ordinance 1923 (Cap. 113) 1486.

s.2. "unexhausted improvements".
"right of occupancy".

s.7. s.13(b). s.14. Prov. to para 2.

Rent must be based on "unimproved value".

Premium must be on "unexhausted improvements".

(pre-determined and unalterable).

Royalty is not pre-determined and is alterable.

based on sisal potential, and only payable if sisal is produced.

In the Court of Appeal for Eastern Africa.

No.14.

Notes of Argument taken by the Vice-President.

14th to 16th April, 1958 - continued.

p. 8. June '48 Memo. of proposals.

pp.9/10. 14 March 50 Conson. to be geared to "potential production".

"Royalties" mentioned.

This was a phrase usual in this industry.

p.10. Foreword

Royalties in reference to the short-term leases.

p.13. Conditions of Sale shown an intention to continue the old system of royalties.

(No! Quite different).

After the general information.

p.14. Specific offer in letter 30.9.50. This shows the sum of £174,600.

Not in truth part of the "Total Net Capital Value" of the Estates. That was a mere label.

(?)

The royalty is certainly geared to user, and depends on imponderables. The £174,600 was only a ceiling, and never an amount to be paid. Might have been no more than £19,397 if price £70 or under. In any event, sufficient sisal might never have been produced. Typhoon might destroy all sisal: no obligation to grow more.

No one knew how much was to be paid: but it was to turn on future user.

We might have been able to root out the sisal and grow pineapples instead.

(No contract up to this stage).

p.17-22. 20.12.50 Formal offer.

p.22. Formal acceptance.

pp.195-201. Arguments about conditions.

p.92. 10.12.54 The certificate of occupancy.

21.12.50 Appellants became entitled to commence business. (38).

pp.209/210/214/215. Accounts showing deductions.

Intentions of parties as indicated by words used.

R. of O. was granted.

Transaction.

Fibre potential etc. relates only to the expected earning capacity of the estates as a business.

Once it is shown that this sum was undeterminable that is conclusive. 77.

2.30 p.m. Bench and Bar as before.

Borneman continues:

Authorities should be approached on the following basis:-

1. Payments in issue were understood by both parties to be payments in the nature of royalties;
2. Both parties intended by "royalties" or "balance of unpaid purchase price" to indicate payments on sliding scale according to quantum of sisal produced;
3. On fact that payments were based on user - for use as Rallis were using; and rose and fell according to chances of business;
4. Even if it be assumed the £174,600 was part of "purchase price", the monthly payments are still on the facts and authorities deductible income payments;

   (The fact that it looks like a lump sum makes no difference if paid by reference to a quantum of user; not pre-determined).
5. There was no pre-determined total sum: at date of contract uncertain what was to be paid;
6. No provision for payment of any total or pre-determined sum in default of payment of any instalments.

(21) Paterson Engineering Co., v. Duff 25 T.C. 43.

(24) Ogden v. Medway Cinemas 18 T.C. 691, 695. "hiring of goodwill".

(5) Constantinesco v. R. 11 T.C. 730, 739, 744, 745.

.... "user of patent" ....

(purely temporary).

(10) C.I.R. v. Ramsay 20 T.C. 79, 92, 99, 100.

General liability to pay the "primary" sum in all events, unless -

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No.14.

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C.I.R. v. Hogarth 23 T.C. 491.
(C.I.R. v. Ledgard 21 T.C. 129)
Jones v. C.I.R. 7 T.C. 310, 315.
Nethersole v. Withers 28 T.C. 501, 512.
Mackintosh v. C.I.R. 14 T.C. 15, 19.
Racecourse Betting Control Board v. Wild 22 T.C. 182.
Rustproof Metal Window Co. Ltd. v. I.R.C. 29 T.C. 243, 266, 268.

15.4.58. Bench and Bar as before

Borneman continues:

pp.47/58. Judgment. Facts.

Mallaby Deeley v. C.I.R. 23 T.C. 153.

(Document expressing part of, but not the whole transaction).

p.16. Just after 26.10.50 Contract completed on payment of 10% or after payment of 50% 16.11.50 - See 33

Valuation - 77 - 19.

p.68. This passage must be wrong: if it is whole judgment is based on misapprehension.

Special consons, arising from nature of "rights of occupancy".

p.71. Grave error.

Mackintosh is indistinguishable.

Bechgaard:

Grounds 2 (e)

We bought live sisal - grown or to be grown - as stock-in-trade.

Mining cases are unhelpful - wasting assets.

Agricultural cases.

S. 14 (1) (h) of Act.

1913 A.C. 771.

Mtoro's case 20 E.A.C.A.108.

C.I.R. v. Pilcher 31 T.C. 314.

Where the conson. is apportioned as here, stock-in-trade is bought as chattels.

2.30 p.m. Bench and Bar as before.

Hooton:

Court: We do not wish to hear you on the "Stock-in-trade" point.

Hooton: The six premises: some do not reflect the true facts.

1 - 4. "Royalties".

There is no identifiable sum payable, or payment provided for, for "sisal potential".

p.13. "Premium and royalty" are taken together and are one.

"Period" related to leaf potential at time of disposal.

Premium and Royalty both cover all improvements, including leaf.

p.14. Total net capital value.

(The X 9 factors)

p.17. We cannot speculate on causes of form this.

Even if deliberately arranged with a view to income tax - no matter.

These are instalments of purchase tax.

Nothing severable in respect of "sisal potential".

Whole sum or sums depend on what was there and the views taken of probabilities.

p.195. Not queried then.

p.198. ? reply.

No magic about words "purchase moneys". But in fact they were.

What did Appellants acquire?

"An asset for the enduring benefit of a trade".

"Atherton v. British Insulated and Helsby Cables 10 T.C. 155, 198.

i.e. the Sisal Production trade.

British Salmson v. C.I.R. 22 T.C. 29, 39.

Mohanlal v. C.I.T. Berar (1949) 2 A.E.R. 652, 654.

S.2, 12, 10, 13 Cap.113.

S.2, 44 (1) (b) Cap.116.

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No.14.

Notes of Argument taken by the Vice-President.

14th to 16th April, 1958 - continued.

A complete "title" is vested in the Appellants.

Constantinesco at p.729

"Royalty" inconclusive.

p.8, p.11, "Alienation" of land 9, 37, 38, 52.

p.14. "Capital value" is paid by premium and royalty.

p.17. The most reliable guide. This was the contract.

No concluded contract at any earlier stage.

Deposits would have been repaid.

Racecourse B.C.B. v. Wild 22 T.C. 182.

No demise - no title - annual fee for licence.

C.I.R. v. Adam 14 T.C. 34, 42.

"Relatively permanent nature".

Mallaby Deeley v. C.I.R. 23 T.C. 152.

As to Item 5.

p.17. The contract makes the £174,600 the principal debt unless the instalments abate for specific reasons.

This would remain a capital debt, until discharged as provided.

Nethersole v. Withers 28 T.C. at 509, 510.

Hogarth 23 T.C. 491, 499.

Ratio was that this was a share in net profits.

The fact that there was no predetermined sum was not conclusive either way.

(Duke of Westminster's case)

(Ledgard 21 T.C. 129)

Variation of instalments in reference to payments.

A reasonable explanation of these instalments may be inferred from the circumstances, both as to variation of amounts and of dates.

Ramsay 20 T.C. 79, 92, 93.

explains Jones 7 T.C. 310.

Minister v. Catherine Spooner (1933) A.C. 684.

(C.I.R. v. Marine S.T. Co. (1920) 1 K.B. 193, 203).

16.4.58. Bench and Bar as before.

Borneman in reply:

Hooton's 16 points.

1. The early documents show the substance of the transactions. I agree "sisal potential" not separately charged. Must find what was charged for it. Obviously the figure for royalty, which was for "user". September and December letters show same result.

2. Must be judged at date of contract. I agree, whether it was September or December. Subsequent events immaterial.

3. Payment of £174,600 based on growing sisal. Yes. Geared to it both as to price and as to amount shipped.

4. The X 9 point. Correct in fact. Shows that the royalty was based on anticipated fibre tonnage. "For use as it was used". Rowlatt J. Sale price not fixed at beginning and made payable by instalments. Monthly future sum dependent on actual future price and production - both unknowns - total ascertainable only in futuro or on commercial imponderables.

   Rustproof Metal case 29 T.C. 268.

5. "Royalty" not conclusive. Agree, but strongly indicative. Rely on context, not word.

   (Different, at different stages).

6. Nature of right of occupancy. I don't accept that it confers title; but it doesn't matter. (Even if "permanent capital asset" bought) it is paid for by income payments.

   Admit may be relevant on stock-in-trade point, but not on this.

7. Small estates - Carson said there was then "no practical sisal potential". (Although that does not appear in the note) of XXin. p.38.

8. Racecourse B.C.B. case.

   Agree only an illustration: no new principle. (Temporary asset - in nature of rent). 'Income' payment to pay for capital asset.

   Ogden v. Medway Cinemas. 18 T.C. 691.

   Fixed sum for goodwill, but revenue payment "for use during a certain period of certain assets". Finlay J. (Lease was for 13 years)

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9. Spooner's case. 1933 A.C.

(a) Money not oil: recipient was not entitled to the money: was it "profits or gains" in her hands. Not a business woman.

(b) Strong onus on Appellant under Canadian Act. No other grounds.

(c) Land sold: "part of land itself" (oil) was reserved. Sale of the oil a separate transaction.

(d) If cash, not oil had been reserved, result different.

(e) Marine Turbine Co., Ltd., case was excess profits. Turned on whether Co. (in liquidation) was carrying on a trade. Dicta are obiter.

12 T.C.174, 180
1920 1 K.B.

(f) Not relied on in any subsequent English cases.

10. Agreement providing "alternative methods of payment". £174,600 down or royalties. Not so, on the wording. Only instalments monthly, as due.

11. I agree, if a capital asset bought "for a capital price", it may increase or abate. But begs the question. There can be a capital price which varies.

12. The £174,600 was said to be a debt due under the contract. It clearly is not. This is fundamental. It could never be sued for. Never due if no sisal could be produced. Wrong. Even if bound to grow sisals and did not claim would only be for unliquidated damages for breach of contract, not for the £174,600 as money due under the contract.

§ (vi) 19 foot. (Follows Land Tenure Ord.)

13. "Pre-determined sum" is not a phrase itself used in the cases: but summarizes their effect from Scotie's case onwards. "Antecedent debt" is the usual phrase. Ramsay 20 T.C. 93.

Now theory slightly watered down, but still generally correct, and certainly in this type of case. As at time of contract there must be a lump sum which can then be calculated with precision. Unless this can be done, not a capital payment. If not so predetermined, the payments are income. Even

if pre-determined, may still be paid by income instalments.

Rustproof case Lord Greene.

"by reference to quantum of user".

14. Nethersole's case

§ (d) p.21 provides for return "salva re integra".
(No, merely on erosion provision)

15. cf. Ramsay's case - a global sum "dominating".

Hogarth 23 T.C. 491, 499.

Three payments for each of three years.

(Ledgard)

Here, like Hogarth, it is pay as one goes. No global sum.

16. Would Rallis be in breach of contract if they ceased to produce sisal? Perhaps, but if so, claim by Crown only in damages, not a claim for any sum due under the contract.

Taking all considerations together the instalments must have been payments of income. Isolated dicta cannot affect the general principles. Crawshaw J. accepted the principles, but failed to apply them.

Test my six points against this.

Unusual that money should bear one character qua payer and another qua recipient. If recipient here a private person he would obviously have to pay tax as on income.

(Counsel agree there should be a certificate for two Counsel).

C.A.V.

F.A. BRIGGS,
VICE-PRESIDENT.

22.5.58. Bench as before.

A.B. Patel holds Appellants brief.

Hooton for Respondent.

Judgments read. Appeal dismissed with costs.

F.A. BRIGGS,
VICE-PRESIDENT.

In the Court of Appeal for Eastern Africa.

No.15.

Notes of Argument taken by Mr. Justice Forbes.

14th to 16th April, 1958.

No. 15.

NOTES OF ARGUMENT TAKEN BY MR. JUSTICE FORBES

14.4.58. Coram: O'Connor, P.
Briggs, V-P.
Forbes, J.A.

Borneman, Q.C., Bechgaard with him, for Appellant.
Hooton, Livingstone with him, for Respondent.

Borneman:

Tax charged by reference to years of income 1951 and 1952 income.
Only point is question of principle - No dispute as to figures etc.
1951 - 229,692.
1952 - £496,511.

Claim here is to deduct.
1951 - £94,326.
1952 - £80,274.

E.A. Act, in common with other Acts, purports to tax income only.

Deduction allowed if expenses is of income nature.

Whole issue here is whether sums claimed as deductions are proper revenue expenses.

Submit here sums claimed are revenue expense.

E.A. Act similar to U.K. Act.
Monies wholly and exclusively incurred etc.

Same principles apply.

E.A. Act. S.8(1) general charge.
Not disputed that income of Appellant falls under:

s.14 - Deductions.
s.15 - Prohibited deductions.

Whole issue here as between Capital and Revenue.

Money paid for user of assets. e.g. Rent paid for building - office etc. Hire of room, typist etc.

Money paid for hire of asset deductible.

Money paid for right to use an asset deductible. - A revenue charge.

Royalties - name for money paid for right to use.

Probably derived from mines.

Has taken on wide meaning. e.g. royalty on copyright.

Used in many ways to denote price paid for right to use.

Must be revenue expenditure if asset used in course of trade.

This sum money paid for right to use sisal potential. Called by Government "Royalties" and so remained to end.

But label does not matter. It is merely an indication of intention. May be strongly indicative.

Two underlying principles of law -

Money paid for user of asset a revenue expense. Whatever label used, still right of Court to ascertain nature of transaction.

Q. is "what this sum was paid for?"

Submit it is sum paid for the user of an asset.

When I say "user" I do mean asset belonging to someone else. But in this case would have made no difference if freehold had been transferred here.

Add purchase price may be alleged to be assessed on revenue.

Government called this "royalty" from first. Did later call it purchase moneys - but submit it makes no difference. Point was conceded eventually in Court below.

Here certain sisal land passed into possession of Appellant for:

a rent;
a premium, based on unexhausted improvements.
a royalty, geared to quantum of user of sisal.

I am not here to complain of principles Judge accepted. My only complaint is that he failed to apply the principles he accepted.

Having accepted authorities submit he was sidetracked by two submissions of Respondent.

Line may be fine, but when drawn is clear.

Submit on facts of this case clear we fall on income side of line.

Submit no use picking a particular passage out of context and applying it. Therefore propose to deal with facts first.

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Here two estates. Lanconi and Mjesani. Originally the property of a Company capital of which held by German subject in 1939, and Ralli Brothers selling agents.

On outbreak of war, property passed to Custodian of E.P. Later property restored to Company and Ralli Brothers still managing estate.

30.6.48. - Enemy Property Disposal Ordinance 1948.

Lands passed to Custodian as agent for Tanganyika Government Ordinance at p.34 - Unimportant.

Lands became property of Tanganyika Government on 1.7.48.

Rallis appointed managers.

1.1.51. - Lanconi and Mjesani Estates passed into possession of Appellant Company as result of transaction subject of this action.

Terms:

Company took "right of occupancy"
Rent paid for 99 years.
Premium paid for unexhausted improvements at time.
Adjudged to pay a royalty on sisal fibre produced.

We might have claimed premium but have not.

Crown claim royalties part of pre-determined purchase price.

Submit this not correct.

Land Tenure Ordinance of Tanganyika 1923.
Cap. 113 (p.1486)
s.2 - Definition of "unexhausted improvement"
Definition of "right of occupancy"
s.7 - 99 years.
ss.13 - Premium paid for para.13(b).
s.14 - Proviso to para. 2.

Indicate rent for right of occupancy is rent for unimproved value.

Payment of rent for unimproved value and payment of capital sum for unexhausted improvements.

Here have paid premium and are paying rent.

Here also paying royalty - not pre-determined and not for capital improvements.

It is for use of sisal land, for use of sisal potential. Only paying it as and when we produce sisal.

Record:

p. 8 - Memo. prepared by Custodian on the proposals for disposal of sisal estates. At that stage it appeared that conson. would be geared to potential production.

p. 9 - Press Notice of 14.3.50 - Invitation of applications - Catalogue with terms.
"Premia, Royalties and Rentals"
"Royalty" in this context well known and well accepted in industry. Everyone knew what that meant.

Royalty is geared to a quantum of future user.

Then issued "Land Settlement No.4 of 1950.

Contained a foreword which is basis of whole transaction.

p.10 - Royalties on a sliding scale.

Term royalty accepted for 10 years as connoting a payment leased on production. Everyone knew meaning of term.

(V.P.- Form of conson. particularly suitable to short term leases - not so suitable to longer lease)

Only saying that parties knew precise meaning of the term.
Rightly or wrongly that is what Government thought it right to do.

(V.P. - Did that continue?)
Yes - right through to end.
Royalties geared to production and current market prices. That continued throughout.

p.12 - Para. 2 - Premium fixed on this.

p.13 - Conditions of sale - Vital clause.
Three fold conson.
Short submission is that this shows continuation of old system by shown as part of conson. a royalty geared to quantum of user as under old system.

(J.A. Royalty as well as premium related to unexhausted improvements).

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14th to 16th April, 1958 - continued.

Word loosely used. Premium and fixed sum on basis of unexhausted improvements. Royalty indeterminate figure. Royalty on quantum of user. No doubt used by Tanganyika Government.

(V.P.- Does proceed of sale go to any fund - e.g. for Enemy subject?)
Cannot answer. Don't accept this a peculiar transaction. Very Common.
e.g. sale of an invention.
One of conson. was periodical sums of money geared to user.

p.13-14 - Letter of contract - Basis of this case - dated 30.9.50.
Addressed to Ralli Brothers.
Para. 2 - linked to Catalogue.
Para. 4 - Royalty.
Para. 5 -

(V.P.- Royalty stated to be balance of nett capital value?)
Submit that never achieved more than dignity of a label. Unimportant on authorities.
If price fixed, it may still be paid partly as capital and partly as revenue.

p.15 - Table of Royalties two important points.

(a) Geared to user.
(b) Depends on imponderables as at time of writing.
Total balance was never more than ceiling - never an amount to be paid. As at that date no one could say how much royalty would be payable. Might be much less than £174,600. That figure only a ceiling. Might have been as low as £19,000 odd.
Might never have reached subsidiary limit.
Royalty was for user of sisal potential - user of land to produce sisal.
Not geared to the amount of sisal on land - It is geared to production of line fibre. (But see p.13?)
Royalty could not be said to be geared to existing leaf - p.14 - line fibre - not leaf.
When contract eventually made all sorts of factors - leaf on land and leaf will be on land.

Submit clear royalty could never be more than £700,600 (sic). Could only be that if we went on producing long enough and price was high enough.
Ceiling figure only came into play because price rocketed.
Royalty might have been anything from nil to £700,600 (sic) payable over any period of time.

(V.P. - Nothing to stop you rooting out sisal and planting pineapples?)
Think yes, but may well be it could have been used for anything.
But if sisal produced, royalty must be paid.

p.16 - Letter to Ralli Brothers.
Offer to us of these two estates.
We paid 10% referred to.
Therefore a complete contract.

(V.P. - Is that so? No concluded contract).
Not material - all I say is we paid 10% and it was accepted.
Rallis subsequently told terms of payment.

Pursuant to that are paid £115,000 in November.

p.17 - Letter of 20.12.50.
Extraordinary document. Bears marks of writer having realised tax would not be payable on part of conson. Would only say seems little doubt that Tax authorities consulted.

p.198 - Don't wish to criticise when not necessary - But letter shows a conviction that construction I have sought to place on earlier documents is correct. Change of label does not matter. Not embarrassed by letter. "Royalty" still runs right through transactions.

Para.2(i)(a) - clear tie with earlier document.
Para.2(i)(b) - Payment made pursuant to earlier document.

p.22 - Acceptance - see also pp.195-204.

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Letters raising certain difficulties.

p.199 - Para.4 - Discussion with Income Tax Department.
Makes no difference - superficial shifting of ground - Judge so found.

p.192 - Certificate of occupancy - 1954
(Ralli Estates became entitled to commence business on 21.12.50)
Throughout dealt with on basis that contract with Ralli Estates to be interpreted by reference to earlier documents.
Letter of 20.12 refers to deposit already made. Whole thing so linked together.

(V.P. - If Government did change intentions on 20th December they were entitled to do so. i.e. before formal contract. We have to construe document of 20.12).
Don't accept that, but don't mind. Yet same answer both ways.

Accounts: p.206 et. seq.
p.209 - Royalties treated as deductions from F.O.B. proceeds so to do in accordance with commercial principle. Not conclusive but strongly indicative.

p.187 - Questionnaire - para. 6 - formation of subsidiary Company.

Question must turn on construction of documents - what parties intended by reference to words they used, transaction resulted in grant of right of occupancy over public land "deemed to be undeveloped" Resulted in sale of unexhausted improvements for premium.
Also resulted in royalty on production "Potential" - taking into account not merely existing leaf but also potential production after have entered on estate.
Tonnage only fixed by reference to line fibre.
Submit conclusion inevitable if fair value given to all relevant words including word "potential".

(But see p.38)

Adjourned to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

Borneman continues:

Authorities - indicate signposts to be followed.

First wish to set out 6 assumptions of facts.

(a) Payments in issue were understood by both parties to be payments in the nature of royalties. (But ?)

(b) Both parties intended the use of the word "royalty" or "balance of unpaid purchase price" to indicate payments on a sliding scale according to the quantum of sisal produced. (Also ?)

(c) On the facts the payments were based on "user" for use as Rallis were using, and they were payments which rose and fell with the chances of business. (Also ??)

(d) Even if it be assumed that the £174,600 was part of a purchase price, the monthly payments which made it up are still on facts and on the authorities income payments which are deductible.
The fact that £174,600 looks like a lump sum makes no difference if it is paid by reference to a quantum of user.

(e) There was no pre-determined global sum. Standing at the point of time when the contract was made no one could say how much would be paid (if any) at the end of the day.

(f) There is no provision for the payment of any global sum or of any pre-determined sum in default of payment of any instalment.

Hope I have not assumed anything too much in my favour.

Authorities:

Paterson Engineering Co., v. Duff 25 T.C. 43 - at p.48.

Ogden v. Medway Cinemas 18 T.C. 691 £500 a year for "use of goodwill".

Submit very close to this one.
P.695 - "substance of the matter"

Constantinesco v. R. 11 T.C. 730; 42 T.L.R.; 43 T.L.R. 727.

Sum paid for user.

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(V.P. Patent remained vested in C?)
Yes.
42 T.L.R. p.742.

(V.P. Substantially this was an outright sale of the land tho' not in form).
While not accepting that, don't wish to argue on that basis. Not embarrassed by that fact. Establishes principle that what is paid for user is an income payment.

Ramsay's Case 20 T.C. 79.

Relied on by Judge - submit wrongly.
Price pre-determined subject to variation.
Pre-determined price throughout which could be sued for if anything went wrong.
In this case no antecedent sum or debt which had got to be paid. Here there was not and could be no point of time at which we became liable to pay £174,600.
Vital distinction - In Ramsay if business closed down, full amount payable. Here, if production close, nothing payable.
Submit Ramsay, Ledgard and Hogarth are very special cases and so of doubtful use as authority in this case.
Here it is income because it is contingent on the carrying on of sisal production.

Hogarth's Case 23 T.C. 491.

At p.499; p.500.
Must be a pre-determined sum to bring case within Ramsay.

If ultimate sum rises or falls with business, then a Hogarth case.
Not reasonable for Judge to hang case on a couple of phrases taken out of contract.
In any case these cases too specialised to give reliable pointers.

Jones v. C.I.R. 7 T.C. 310; (1920) 1 K.B. 711.

Submit judgment applies to this case. Sum which rises or falls with the changes of business.
Must look at it at time contract made. No time when chances of business did not regulate amount payable. Never acquired dignity of pre-determined sum to be paid.

Nethersole v. Withers 28 T.C. 501 at p. 512.

Mackintosh v. C.I.R. 14 T.C. 15; 19.

"paying for the use as they are using it".

Racecourse Betting Control Board v. Wild 22 T.C.182; (1938) 4 A.E.R. 487.

C.I.R. v. Rustproof Metal Window Company 29 T.C.243; (1947) 2 A.E.R. 455.

Those are cases which will assist Court. Submit they cover the whole of the law on the subject.

Submit that at point of time of making of contract there can only be one conclusion.

Any other conclusion must be strained one.

Must be a looking forward from time of contract.

Only liability to pay a sum by reference to user.

Only at end of transaction can sum be ascertained.

Adjourned to 10 a.m. tomorrow.

A.G. FORBES, J.A.
14.4.58.

15.4.58. Bench and Bar as before.

Borneman continues:

Judgment of High Court Judge.

p.47 - 58. Review of facts.

Judge accepted all principles of law submitted by Appellant, but submit he did not apply them.

p. 58 - Refusal to shot out evidence.

(Hooton - will not raise point:)

p. 59 - "to find out what in fact these words ..... really mean".

Correct approach.

p. 60 - Duff case - Also referred to

Mallaby Deeley v. C.I.R. 23 T.C. 153.

But for antecedent agreement, there would have been no doubt that sums would have been deductible - P.166; P.169.

I only say one must look at previous arrangement to explain the transaction.

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(V.P. In those cases it was held the document was not the complete legal transaction).
Must therefore go through stated case.
Does not matter ultimately as I am prepared to accept Crown case and still say it gets them nowhere.

(V.P. Is it correct that a difference between a document which discloses whole transaction and one which does not?)
Yes.

(V.P. Does not contract of 20th December do so?)
No. It does not purport to stand on its own. It ties itself to what has gone before.

(V.P. Does it not supersede what has gone before?)
No. Only end of road. Reference in letter of 20th December to previous negotiations. Question is not as much whether or not whole terms are contained in document, as what parties mean by the terms and expressions used in the document. I don't suggest there is a lie told on the face of the document.

(V.P. Government entitled to shift ground if they so wished).
Do not resile in any way, but cannot argue further on point. Government has put itself under an obligation and then comes and repudiates.

(V.P. At what stage would Government be under obligation).
When 10% paid on 26.10.50 or thereabouts and again on 16.11.50 when 50% paid.
Rules not same when dealings inter partes and dealings with third parties are being considered. Where 3rd parties concerned, whole transaction must be considered.
Letter of 20th December not the only matter relevant to ascertain true nature of the transaction.

(V.P. Not a question of not looking at earlier negotiations, but purpose for which one looks).
What this Court has to discover is what was substance of transaction. Have never intended to say anything more than that.

Judgment:

p. 60 - Judge accepts approach I have suggested.

p. 62 - Top para. (15). That, of course, is this case. If accept that this is sale of property, there is a sale for annual sums if no pre-determined sum which must be paid. Para.16 - don't think accurate, but do not quarrel with it. Para. 17 - Not evidence before Court as to how figure was fixed. Para.17 - At p. 63 - Accurately sets out my submission.

p. 65 - Could not have been an inclusive rent under Land Tenure Ordinance. "Potential production" does not equal "leaf potential" but makes no difference.

p. 67 - Judge deals with my main argument. In Jones case there was first a fixed sum, then a pre-determined sum, then a sum of royalties dependent on vagaries of production. Jones case very close to this case.

p. 67 - Far more features of Hogarth in present case, than features of Ramsay case.

p. 68 - Para.20 - Last sentence - Judge goes clearly wrong. He bases whole decision on Ramsay and submit that is straw too much to support judgment. In Ramsay £15,000 was sum always poised to come into operation - unalterable price - fixed pre-determined sum. Might have been an action for damages if failure to carry on production, but if destruction of sisal land by typoon, we could not have been compelled to pay.

Unless you can find a pre-determined sum, cannot be a capital payment. If, as I contend, conclusion in last sentence is wrong in law, whole of judgment falls to ground.

p. 69 - Submit Judge has gone too far. Possession of land and right to use it can depend on nothing but right of occupancy - always given in conson. of annual rent for unimproved value.

(In answer to J.A.) Do not accept that "royalty" was part of conson. for unexhausted improvements.

p. 70 - "as part of capital valuation" begs the whole question.

p. 71 - 13th line - "payments based on capital sum

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as in instant case". Submit begs the whole question. What he means is "predetermined sum". Submit no escape from Mackintosh case except by saying this is capital sum and finding something to support it. Royalty under provision system -

Agree not continued. But royalty was based on production and Judge accepts that it would be payment of revenue nature. Follows that here it would be payment of income nature.

Mistake to confuse "capital sum" with "pre-determined" sum. Judge has never posed this question.

p.71-72 - Accountancy - indicative of nature, but of itself not conclusive.

The judgment accepts whole of principles I have submitted, but it fails to apply them.

Second issue - stock-in-trade. Mr. Bechgaard will address.

BECHGAARD:

Ground of Appeal 2(e)

We bought either 197th. Tons or 19th. tons of line fibre to be produced.

Paying separately for unimproved value and for unexhausted improvements.

(Vice-President: Can grass be stock-in-trade while still growing?)

Farmer might buy crop of next year's hay stock-in-trade when produced.

See nothing difficult in sale of future crop. These were in fact sold before (sale?). No difficulty in reducing it into possession. Stock-in-trade cases fall into 2 groups - mining, and agricultural.

Mining of no particular assistance - concerned with wasting asset.

Agricultural cases more in point - is most necessary to go into remote considerations of real property law - probably not applicable in Tanganyika s.14(1)(h) of Act - permits the deduction. Kauri Timber case does not apply in Tanganyika in consequence.

(1913 A.C.771)

Submit right of Occupancy so different that difficult to rely on English cases. Land Tenure Ordinance contemplates split ownership.

One case - Mtoro Bin Mwamba 20 E.A.C.A. 108 - conception of divided ownership of land accepted.
p. 70 - Distinction between ownership of trees and ownership of soil.

(Vice-President: But that is native law - not ordinary law.)

Submit right of occupancy so far removed from English law that nothing heretical in suggestion of divided ownership. Indeed submit implicit.

Refer 3 cases.

C.I.R. v. Pilcher 31 T.C. 314.

at p.321 - "one simple transaction".
p.322 - "That is what case says" etc.
p.327/328 - "The facts" etc.
p.331 - "It is true" etc.

We say that here we paid separately for land, for unexhausted improvement and for stock in trade. That was agreement between parties. Can be a forward sale of e.g. next 3 years production. Price was to be determined as and when produced - sliding scale. Either £174,600 of stock in trade; or 19,000 tons at lower price on sliding scale.

Top of p.332 - "hempe" - "fructus industriales" - cf. sisal.

Also at p.333.

When potential was realised, payment was fixed. Here tripartite conson.

P.335 - final paragraph.

Submit Pilcher v. Saunders is adequate authority for proposition that if purchase price apportioned, then stock in trade bought.

Adjourned for 10 minutes.

2.30 p.m. Bench and Bar as before.

Hooton: (Not called on as regards "stock in trade" point.)

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No.15.

Notes of Argument taken by Mr. Justice Forbes.

14th to 16th April, 1958 - continued.

Would start with conson. of 6 premises of Appellant.

Will submit that these premises do not reflect facts.

Will take first 4 premises first (p. 11 of notes).

Appellant's arguments throughout on basis of identifiable sum payable in respect of sisal production - forward production.

p.13 of Record - conditions of sale. - Premium, royalty and rent - three elements lumped together.

"Premium and royalty" to be related to value of unexhausted improvements including leaf, building, machinery and equipment.

Not possible on this to say what payable in respect of "sisal potential" alone.

"leaf potential at time of disposal".

Two clear deductions -

(a) Royalty and premium taken together and payable in respect of unexhausted improvements.

(b) Leaf potential at time of disposal -

That is what is being paid for subsequent documents do not detract from these deductions.

p.14 - Presumably on this document that Appellant argues identifiable sum payable for royalty.

"whole balance" - case only mean balance of purchase price.

"based on" - Is not payment.

"for" - only a method of payment.

Not contending for strict value of words. But there is a total net capital value of estates.

That total is made up of premium and "balance" on royalty.

Submit entirely consistent with earlier document. Method of payment geared to production.

Number of elements included in premium and royalty.

(Vice-President: Figure = 9 lbs. per ton to nearest £100?)

p.38 - Carson's evidence - based on mature and immature sisal at that time i.e. what was on the ground.

Will be my contention that in any event whole £174,600 would be payable.

Would explain Carson's evidence that estimate was a fair one.

p.17 - Nothing in evidence to indicate that when land authorities came to draw up formal offer they applied themselves with care to terms used.

Would not matter if Income Tax Department did have a hand in it. Would be quite proper for Tax Department to say previous words a misdescription and suggest it should now be called what it is. Nothing in this document either which identifies money payable for sisal potential - i.e. something exclusively in futuro.

p.196 - use of word "purchase-moneys" not queried as improper use of words. Reference to "purchase consideration".

p.199 - Para.4 - reference is to dispute between fixtures and movables - v. P.47.

p.17 - What would expect to find - i.e. the considered terms of bargain.

Don't put undue value on use of words "purchase money" but contend those words in fact express true nature of transaction.

Appellant contends for a "user in futuro"

Atherton v. British Insulated and Helsby Cables, Ltd. - 10 T.C. 155 at p. 192/3.

p.185 of Record - Ralli Bros. intending to enter trade of sisal production.

(Borneman: I agree that.)

Would put forward and definition of "User" appears in British Salmson Aero Engines v. C.I.R. case 22 T.C. 29 at p. 39.

Suggest a "user of land" is only such a thing as disentitles owner to complain of trespass or damage.

Illustrated in -

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Mohanlal Hargovind v. C.I.T. (1949) 2 A.E.R. 652 at p. 654.

Suggest this is concerned with typical user of land.

Distinguish from this case in that here an interest in land bought which exceeds a mere right of user.

Cap.113 (Land Tenure) - s.2 - "Right of occupancy" - and s.18 - exclusive right to land - Governor's rights restricted by s.10.

S.12 - devolution on death - equated to leasehold.

cf. Also Cap. 116 (Now repealed, but in force at relevant time).

S. 2 - "Lease" includes a "Certificate of occupancy" under Lands Ordinance.

S.44(1)(b) - "vest in the person" etc.

Legal title in land is vested in occupier - not mere user.

Settled on authorities that expression "royalties" is inconclusive. Constantinesco's case.

Submit certainty inconclusive in this case.

Submit quite clear not same as sense in which word used in short term leases v.

- p.10-11 - In those cases, everything consistent with "user".

In this case, no covenant to return land in original state. Apart from implied contract to produce sisal up to total mentioned in contract. No obligation to continue planting sisal.

Whole tenor is disposal of parcel of land. e.g. p.10; p.11.

p.10-11 - offer is of a "going concern".

p.13 - Conditions of sale.

Rent is related to unimproved value - what bought is the "unexhausted improvements" including standing crops, buildings etc.

- a revenue producing business.

Part of purchase price is related to estimated potential at time of purchase. Nowhere is sum

attributable to estimated potential fixed.

p.186 - Para.3 - Purchaser clearly regards himself as virtual owner.

p.187 - Company "to own" and work the estates.

p.192 - "ownership of these estates"

p.185 - "long term leases"

Also p.14 - "full value" in case of large estates = premium + royalty.

p.18 - Do suggest this document is the most reliable evidence as to true nature of transaction, though do not seek to shut out earlier documents. Purchase price for "land" etc. + movables.

Para.(ii) - balance of "purchase monies". standing at beginning - everyone knew there was sisal there which could be cut at once and that if events ran normal course there would be no difficulty in fulfilling contract one way or another.

p.20 - Only limitation on "tenants" is that land be used for "agricultural purposes".

Therefore apart from obligation to produce tonnage of sisal, no restriction as to type of crop. Nothing to stop purchasers resiling from contract and recovering money before acceptance of offer of 20th December - v. P.19 "if you accept".

p.200 - clear indication of what purchasers thought they were getting

Submit from all documents impossible to infer that Appellant got a mere user of a potential. They got an asset.

Racecourse Betting Control Board case - 22 T.C. 182)

Submit only signpost if first 4 premises applicable - But submit they are not. Facts quite different - that case clearly relates to right of user.

Com. I.R. v. Adam 14 T.C. 34 at p.42.

Two of elements present in this case - asset of a permanent character. Conception of "user" could not run with freehold.

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14th to 16th April, 1958 - continued.

Mallaby Deely case 23 T.C. 152 at p.166.

Does give indication of signposts.

Submit there is here an undertaking in any event to pay a capital sum.

I am saying that what has been done here is to provide 2 alternative means of meeting a capital obligation. Submit that for purchase of this estate part of price is to be paid in alternative.

p.17 - Full purchase moneys = Shs.9,832,000, "Balance" to be paid by instalments.

Though that sum may abate in certain circumstances, if those circumstances do not happen that sum is a debt under this contract - i.e. Shs. 3,492,000.

No authority for proposition that "if no pre-determined sum, then no capital transaction". Position here similar to Ramsay's case.

If some disaster happened submit that in law the full sum would be recoverable as balance of purchase money.

Standing at beginning of contract there is an obligation of £174,600 which in certain circumstances may abate.

Nethersole's case 28 T.C. 511.

Capital payment there depended entirely on imponderables.

"Pre-determined sum" may be very material consideration, but not conclusive.

P.509. This is basis on which I am urging this case.

Hogarth's case 23 T.C. 491.

No pre-determined sum, but held revenue payment. But see grounds - P.499, para. 2. - percentage each year of profits.

Distinction drawn between percentage of profit for each year, and percentage of profit for three years.

That was basis of decision - not absence of pre-determined sum.

Constantinesco case - referred to by B. as authority for "pre-determined sum" proposition considered

in Nethersole's case at p.510.

Have no right of receiving back property intact.

Reason for sliding payments - sale of concern - Carson says estimate based on plants in ground fair. But Government knows price of sisal fluctuates.

Therefore fix price and period of payment on reasonable estimate; but also provide for variation in price of sisal - either in favour of against Government/Vendor. There is reasonable explanation for both variable period and variable price.

Ramsay's case 20 T.C. 79 at p.92.
and especially at p.93 "That is a general test" etc. P.94.

Submit case not to be distinguished from Ramsay's case.

Reference was to "primary" price in Ramsay's case. Therefore no pre-determined sum in sense contended for by Appellant. p.95.

I submit that if Ralli Bros (?) ceased to produce sisal they would be in breach of contract v. p. 9 - reference to questionnaire. p.185 - Questionnaire submitted. Obvious that question was indeed part of agreement. p.186 - Declaration of plans if property acquired.

At p.100 of Ramsay's case.

Rely on Lord Romer's words - "purchase money may be increased or may be diminished". Therefore no pre-determined sum.

Consistent with proposition that where capital asset purchased, conson. normally capital.

Minister of National Revenue v. Spooner (1933) A.C. 684.

No pre-determined sum.

Submit there can be no doubt this sum was part of sum paid for a capital asset. Not paid for user.

Paid for an existing interest in land.

Submit it is a capital payment and appeal should be dismissed.

Adjourned to 10.30 a.m. on 16.4.58.

A.G. FORBES, J.A.
15.4.58.

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No.15.

Notes of Argument taken by Mr. Justice Forbes.

14th to 16th April, 1958 - continued.

16.4.58. Bench and Bar as before.

Borneman in reply:

Line between capital and income difficult to find, but, when found, definite and inevitable.

16 Points made by Respondent -

(1) Earlier conditions of sale. That and other documents do assist in arriving at nature of payment. Said "that impossible to say what payable for sisal potential". Agree, but Court entitled to draw inference as to amount to be paid for exploitation and user of sisal potential. Submit that figure was royalty i.e. £174,600. c.f. also letter of 20th December.

(2) "One judges issues of this sort by standing at time of disposal".
Agree. Would be clearly wrong on authorities to look at position ex post facto.

(3) "That this payment of £174,600, was based on sisal potential".
Agree. I said it was "geared to" potential. Geared to production and price.

(4) Figure for fibre tonnage - clearly based on figures of £9 per ton.
Submit shows conclusively that balance due on royalty was based on fibre tonnage.
Therefore "For use as it was used", shows this not a case where sale price fixed at beginning and then parties agree it should be paid by instalments. Shows instead a monthly payment geared to production and market price. Those factors imponderable. Aggregate called "purchase price" - vital distinction found in all the cases. Rust-proof Metal Window case 29 T.C. 268. "If lump sum arrived at" etc. This is core of whole matter.

(5) "Use of 'royalty' not conclusive" -
Agree, but say it is strongly indicative. May have been used in different sense in short leases, but immaterial.
'Royalty' shows payments geared to user.

(6) "Right of occupancy does confer an interest in land".
Don't accept that it does, but I don't mind.

For purposes of this case it does not affect this quality of the payments. Still being paid for by variable sums of money month by month as you go along out of trading receipts.

I just accept proposition. It does not hurt me. Relevant as to "stock in trade" point but not this point.

(7) "In letter of 30th September, reference to small estates".

Carson's evidence - no note of examination in chief. Record only of cross-examination. Don't know how this happened. Presumably mistake in copying. According to my Junior's not "no practical sisal potential" on small estate.

(President Anxious not to embarrass you because of error in copying).

Do not think point of sufficient importance and sums to be supported on record.

(8) "Racehorse Betting Control case enunciated no new principle"

Agree. An illustration of application of principle. Nothing more.

Respondent made no reference to Ogden v. Medway Cinema. Submit that very strong case against Respondent (18 T.C. 691).

There a fixed capital sum paid for goodwill. Not a sum geared to use. But held to be a revenue payment for use of valuable asset.

(9) Spooner's case.

Six comments on it.

(a) A case concerned with whether a sum of money (to which Respondent not entitled) was annual profit or gain.

Different from a business case.

(b) No reasons given for judgment apart from strong onus on Appellant put on Appellant by Canadian Act.

(c) Vital distinction on facts was that there land was sold, but not cash but part of land reserved as part of price. She reserved to herself part of the land. Taking money was a separate transaction.

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(d) It was money she got from sale of oil that was held not to be an annual profit or gain. If she had reserved cash it would have been an annual profit or gain.

(e) Case referred to - an excess profits case. Passage referred to an obiter dicta (12 T.C. 174 at p.180) in contract. Judge's mind not directed to this point as it was not relevant - only concerned with whether liquidator carrying on a business.

(f) Never relied on in any case to support this proposition. Never even referred to.

(10) "Agreement provides 2 alternative methods of payment - £174,600 down or royalties".
Obviously not 2 methods - one method and one method only prescribed. Agree no reason why £174,600 should not have been paid immediately, but that outside contract and reason.

(11) "If what is bought is a capital asset and capital price paid, it matters not that it changes or abates".
Begs whole question. That is the issue in this case.
Do agree that if a capital price is paid it may abate later, but point here is whether it was a capital price.

(12) "Sum of £174,600 was a debt under the contract".
Clearly never such and Defendant could never be sued for.
"In law the debt of £174,600 would become due if Ralli's couldn't pay or if they produced no sisal".
Submit quite wrong. Never a time when government could have issued writ for this sum.
Whether or not we were bound to carry on growing of sisal (I don't mind). Condition to use land as Minister shall direct. Not clear we were bound to grow sisal. If so bound could only be a claim for damages for breach of contract.
Whatever damages might be, they would not be judgment for money due under contract.
P.19 - one of terms (No.VI) - provision for annulment.
From beginning government and ourselves accepted that we paid as we went.

(13) "No case which used phrase 'pre-determined sum'".
Agree - used it as "shorthand" submit accurately.
Cases establish that is "antecedent debt" - Ramsay's case per Lord Wright (20 T.C.93).
Theory of antecedent debt has been watered down but not substantially changed.
Submit word "pre-determined" is fair reflection of effect of authorities.
Submit theory of "antecedent debt" not watered down for purpose of this type of case.
Before you are on the capital road you must be able to say that at point of contract there is a lump sum to be paid which can at that date be calculated with precision.
That not position here.
If there is not such a lump sum then this amounts paid in liquidation as income and not capital. If there is such a lump sum, it may still be payable by instalments which are in the nature of income.

Rustproof case per Lord Greene.

(14) Nethersole case.
Peculiar case - sets out all principles I have contended for. There is question of return in same condition. There is such provision here.
P.21 - term (d) - cannot be read in any other way.

(15) Reliance on Ramsay's case.
It is only way that one can say it is capital is by starting with that assumption and looking for dicta to support assumption. In Ramsay's case a pre-determined sum, which was always poised to be charged if instalments not paid. True basis of that Judgment appears in Judgments of Lords Romer and Greene and not in Lord Wright judgment. Crown resists looking at Hogarth's case. There provision for payment for a share of each of 3 years. Distinguished from Ramsay on that ground. 23 T.C. at p. 491.
Precisely case here - Payments to be made month by month.
At p. 501 - Distinguishes Ramsay - exactly same distinction as in this case.

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14th to 16th April, 1958 - continued.

(16) "If Ralli's ceased to produce sisal, they would be in breach of contract".
If we cease to produce sisal we might or might not be in breach of contract. Don't mind. If in breach, any moneys payable would be damages for breach and not a sum payable under the contract.

Do say, the conclusion in this case is inevitable. No ground on clear construction of facts and authorities on which it can be said this falls on capital side of line. Judge did accept all the correct principles, but failed to apply them.

6 Premises. I submit they stand precisely as they were. I don't resile from them. I rely on them.

Rarely that one finds a case where a sum of money has one character in hands of payer and another in hands of recipient, though can happen.

Could not be case here. If recipient, here not government, payments would clearly be income.

Submit a pointer which is almost conclusive.

Submit Appellant should succeed.

C.A.V.

A.G. FORBES, J.A.
16.'.58.

(Borneman: Will be application for 2 Counsel).

A.G.F.

22.5.58.

Bench as before.

A.P. Patel holds Appellant's brief.

Hooton for Respondent.

Judgments read. Appeal dismissed with costs.

A.G. FORBES,
JUSTICE OF APPEAL.

I certify that this is a true copy of the original.

REGISTRAR.
11.10.1958.

No. 16

JUDGMENTS OF THE COURT OF APPEAL
(A) THE PRESIDENT

(Appeal from a Judgment and Decree of the High Court of Tanganyika at Dar es Salaam (Mr. Justice Crawshaw) dated the 18th April, 1957)

JUDGMENT OF O'CONNOR P.

This is an appeal from the judgment and decree dated 18th April, 1957, of the High Court of Tanganyika dismissing two appeals by Ralli Estates Limited, the present appellants, against assessments by the Commissioner of Income Tax, the present respondent. The appeals were: Miscellaneous Civil Appeal No. 19 of 1955 in respect of a sum of £80,274 relating to the year of income 1952, and Miscellaneous Civil Appeal No. 20 in respect of a sum of £94,326 relating to the year of income 1951. As precisely the same considerations apply to each appeal, they were heard together in the High Court and have been heard as one appeal in this Court.

As found by the learned Judge in his judgment these two sums amounting to £174,600 were paid by the appellant to the Government of Tanganyika as part of the consideration under an agreement whereby the appellant acquired from the Government two sisal estates named Lanconi and Mjesani respectively, and an additional area of land of 6,000 hectares adjoining Lanconi, on a 99 years' right of occupancy, together with the machinery and other property thereon. Briefly, the question for decision before the learned Judge and by this Court was and is whether this sum of £174,600 was a capital or a revenue payment for the purpose of income tax.

The relevant statutory provision is contained in section 14 of the East African Income Tax (Management) Act, 1952, sub-section (1), the material part of which reads:

"14. (1) For the purpose of ascertaining the total income of any person there shall be deducted all outgoings and expenses wholly and

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exclusively incurred during the year of income by such person in the production of the income, including - "

Then follow a number of specified deductions. The appellant has not relied on any particular specified deduction but has based its appeal on the general ground that the payments amounting to £174,600 constituted "outgoings and expenses wholly and exclusively incurred during the year of income ... in the production of the income" of the appellant, and are therefore deductible. The question for decision is whether or not this contention is correct.

There is no substantial dispute about the facts, the correspondence, or the documents. There is, however, considerable difference between the parties as to the interpretation to be put upon them. I take the following statement of the facts and the history of the matter from the judgment of the learned Judge:

"5. Perhaps it might be as well here to refer briefly to the history of the Lanconi and Mjesani Estates (with which one way or another Ralli Brothers Limited have been associated since before the last war when they were German-owned) and to this transaction in particular. Following the outbreak of war, and up to the time of their acquisition by the appellant from Government in 1950, the estates were managed by Ralli Brothers Limited, at times on behalf of the Government and at other times on behalf of the Custodian of Enemy Property. The appellant is a wholly owned subsidiary of Ralli Brothers Limited and was incorporated on the 21st December 1950 for the express purpose of acquiring and working the estates. In June 1948 the Custodian of Enemy Property prepared a memorandum setting out the basis on which it was proposed to dispose of the many sisal estates under his charge. They were to be transferred to the Governor, who would grant long term rights of occupancy to applicants approved by a selection committee specially to be appointed for that purpose. As to valuation of an estate the memorandum said this:-

"Valuation:

Valuations of properties will be required before the granting of long-term rights of occupancy. Rent will be payable under the rights of occupancy, presumably assessed on the unimproved value of the land. A premium will be fixed for the value of the unexhausted improvements. Consideration will have to be given to:-

1. Valuation of sisal areas.
2. Valuation of Machinery equipment."

It is not, I think, in evidence whether this memorandum was ever made public, but extracts from it appear in the agreed bundle of documents.

6. On the 7th of March 1950 the Government wrote a letter to the Tanganyika Sisal Board, of which the following is an extract:-

"It is proposed to base the valuation of each estate on its potential production. The Custodian can arrange for all relevant information.

It is proposed to advertise the sisal estates for disposal very shortly, and it would greatly facilitate the disposal of these estates if your Board would agree to Mr. Lock's advising on the valuation of the individual estates, and in particular on the assessment of the potential production."

On the 17th of March 1950 the Government published in the Tanganyika press a notice (dated 14th March, 1950) of which the first paragraph reads as follows:-

"Applications are invited for the purchase of ex-German Enemy Sisal Estates in Tanganyika Territory, East Africa. Details of the Estates and the mode of disposal are contained in a Catalogue which persons interested may obtain from..."

and the final paragraph reads:-

"The Estates have not yet been valued, but

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premia, Royalties and Rentals payable will be available before the Selection Committee meets."

The following are extracts from the fore-word to the catalogue published as "Land Settlement Pamphlet No. 4" (in which, incidentally, Lanconi is described as Lanzoni):-

"History of Short Term Leases: After the outbreak of War in 1939, the Tanganyika Sisal Growers Association was consulted by Government with regard to the leasing of the Enemy Owned Sisal Estates. The Association advised Government that in the circumstances, the main qualifications for lessees should be that they owned Sisal estates in proximity to the enemy owned properties; that they should be of good repute in the Industry; and that they should possess a sufficiency of staff and labour to undertake the leases of the enemy estates. Estates were leased in the first instance for a period of one year, at more or less nominal rents: but Royalties were payable to the Custodian of Enemy Properties. These Royalties were based on a sliding scale according to the grades of sisal produced and sold. Subsequently, and from time to time, new leases were entered into upon terms and conditions that shewed considerable variation from those contained in the original leases. Eventually in 1943, leases were granted for a term of five years, which expired on the 31st December 1948; and since the last mentioned date, the leases have been extended for two further periods of one year which as indicated above, will expire on the 31st December 1950. Those leases contained provision for the payment of a nominal rent and a Royalty that is assessed on production at current market prices. The leases also included inter alia, covenants for the maintenance by the lessees of the areas of mature sisal, of the buildings and equipment; and for payment by the Custodian, from Royalties received, of the cost of necessary capital improvements,

e.g. buildings, machinery and replanting. Those capital improvements have been, and are, effected in accordance with an annual programme, mutually agreed between the lessees and the Custodian.

Pursuant on these arrangements, most of the Royalties received have been "ploughed back" into the land, or expended on the purchase of machinery and, to an even greater extent, utilised to give effect to a large building programme, covering mainly the provision of permanent housing for labour. In the result most of the Enemy Estates which had deteriorated considerably during the early years after the outbreak of the War, have recovered their pre-war potential, so far as production is concerned."

"Method of Disposal: All these Sisal Estates are now being advertised for sale in the United Kingdom, and in East Africa. Arrangements have been made for the valuation of the estates to be undertaken. Every applicant for the purchase of a sisal estate must submit, with his application, a duly completed questionnaire form, which can be obtained from the Land Settlement Officer, Department of Lands and Mines, Dar es Salaam. Applications should reach the said Officer, on, or before the closing date for applications, as mentioned in the advertisement of Sale. The estates will be allocated to suitable applicants on the recommendations of a Selection Committee, which will be appointed by Government."

"Conditions of Sale: The conditions of sale will include the offer of a Right of Occupancy over each estate to the approved applicant, on the basis of a Right of Occupancy (or lease) for a term of 99 years, subject to payment of a premium, a royalty, and a rent, and to one exception, namely that the "Karanga" Estate will be offered for a term of 20 years only (c.f. note appended at foot of relevant entry in Catalogue infra). The premium and

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royalty will be related to the value of the unexhausted improvements on the land, including leaf, building, machinery and equipment; and the rent will be based on the unimproved value. The premium will take the form of a cash payment; but the royalty will be payable over an indeterminate period, related to the estimated leaf potential on the estate, at the time of disposal. The land rent will be subject to periodical revision in accordance with the terms of the Land Ordinance; and the other conditions of the Right of Occupancy will also be governed by the said Ordinance, and the regulations thereunder."

7. In August 1950 Ralli Brothers Limited completed the questionnaire and made application for Lanconi and Mjesani Estates, and in a letter of the 30th of September 1950 to Ralli Brothers Limited (hereinafter referred to as "the letter of the 30th September") the Member for Lands and Mines referred to a pending interview of applicants by the Selection Committee, and then said as follows:-

"2. In the meantime, detailed information can now be supplied to applicants regarding the terms of disposal. As explained in the Catalogue, the estates will be disposed of on long agricultural leases of 99 years, except where otherwise stated. A yearly rental of Shs. 2/- per acre will be charged. Payment of a premium and a royalty will be required in all but those estates where the capital value is small, in which cases the full value will be payable as premium.

3. The premium will be payable as follows:-

10% at the time of allotment, to be forfeited if the purchase is not completed.
30% within 21 days of allotment.
Balance within 90 days.

4. Royalty will be charged on a sliding scale, based on the average f.o.b.

price of line fibre, at the rates shown in the attached table of royalties. Royalties will be payable until, in the case of each estate, the whole balance due by way of royalty has been extinguished, or until royalty has been paid on the tonnage liable to royalty, whichever occurs the earlier.

5. The following are the details regarding the estates for which you are an applicant:-

Estate	Catalogue Ref. No.	Total Net Capital Value	Premium Payable	Balance due on Royalty	Fibre Tonnage on which Royalty Payable Tons
		£	£	£	
Lanconi	T1512	191500	121200	70,300	7809
Mjesani	T1513	294100	189800	104,300	11588
Kilulu	T1514	134700	83800	49,900	6153

Other particulars or notes: The above valuation figure for Lanconi Estate is only for the area under sisal. The successful applicant will be offered an additional 6,000 hectares at a premium of £1. per hectare and an annual rental of Shs. 2/0d per acre.

Please sign the attached acknowledgment and return at your earliest convenience.

I am, Gentlemen,
Your obedient servant,

Sgd .....

MEMBER FOR LANDS & MINES.

TABLE OF ROYALTIES

Price of Sisal per ton f.o.b.	Royalty per ton.
£70 - or under	£1. 0. 0."

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Then follows the sliding scale, the last figures being "£146 - or over... £56.18. 0." It will be seen that the sum of £174,600 in dispute is the total of the first two items in column 5 in para. 5 above.

8. Mr. Carson, a director of Ralli Brothers Limited, duly represented his company before the selection committee, but his appearance seems to have been no more than a formality, as the committee already had very full information about the company. He said in evidence: "there was no amplification of the documents which I had already received, and on the basis of which my application had been made."

9. On the 26th of October 1950 the Member for Lands and Mines wrote to Ralli Brothers Limited referring to his letter of the 30th of September and saying that on the advice of the selection committee the company had been selected as the future tenants of Lanconi and Mjesani. Paragraph 3 of the letter reads as follows :-

> "3. In accordance with the conditions of of sale as set out in paragraph 3 of my letter under reference, I shall be grateful to receive your remittance representing 10% of the premium after which a formal offer of a Right of Occupancy will be addressed to you as soon as possible. The term of years in the Right of Occupancy will date from 1st January 1951."

10. On the 20th of December 1950 a further letter was written, this time to the appellant company, and signed by the Acting Land Officer (hereinafter referred to as "the letter of the 20th December"). It was not sent direct, but under a covering letter of the 27th December. Although it does not specifically refer to the letter of the 26th of October, one is entitled I think to presume that it is the "formal offer" mentioned in that letter. This letter of the 20th December starts off by saying: "Your application..... has been approved..... subject to the terms and conditions herein contained and to the Special Conditions

annexed hereto." In fact it would seem that the appellant company was not incorporated until the following day, the 21st of December, and that it was the offer of Ralli Brothers Limited which was meant, although I understand that Government knew that the appellant company was being formed to acquire the estates, and hence, I suppose, this small inaccuracy. The material part of paragraph 2 of this letter is as follows (the figures are in shillings, but for ease of comparison with other documents I have added the equivalent in pounds also):-

"2. This offer is subject to the said land referred to being found available on survey, the final demarcation of the boundaries being determined by Government.

If you accept this offer payment of the full purchase monies amounting to Shs.9,832,000/- (£491,600) of which Shs.8,992,920/- (£449,646) shall be deemed to be in respect of the said land, buildings, immovable machinery fixtures and effects and Shs.839,080/- (£41,954) shall be in respect of movable machinery, chattels, vehicles, and other effects capable of manual delivery and purchased by you, together with the first year's rent, fees for preparation and registration of title deeds, stamp duty and survey fees, when demanded shall be made in the manner following:-

(i) As to Shs.6,340,000/- (£317,000) thereof payable as a premium as follows:-

(a) 10% thereof amounting to Shs. 654,000/- (£32,700) already paid on allotment, receipt whereof is hereby acknowledged.

(Here I would interpose to say that the figure should surely be 634,000/- (£31,700))

(b) 50% thereof amounting to

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Shs. 3,170,000/-(£158,500) already paid, receipt whereof is hereby acknowledged.

(c) 40% thereof amounting to Shs. 2,536,000/- (£126,800) due and payable on the 24th day of January, 1951.

(ii) The balance of such purchase monies, amounting to Shs.3,492,000/- (£174,600) shall be paid by monthly instalments. A notice informing you of the amount of such instalment will be sent on or before the 15th day of each month. The first of such payments shall become due and payable on the 15th day of February, 1951, and thereafter on the 15th day of each and every subsequent month, and shall be paid on or before the last day of each month. The amount of such monthly payments shall be assessed by reference to the tonnage of line sisal fibre produced on the said land and exported during the month preceding the dispatch of the notice hereinbefore mentioned. The tonnage exported shall be assessed by reference to the return made under the Sisal Industry Registration Rules, 1946. Provided always that the Governor shall have option to be exercised at his sole discretion, to assess the said tonnage by reference to the tonnage of line sisal fibre produced on the said land by reference to the monthly returns submitted by you, under the Sisal Industry Registration Rules, 1946. Such monthly payments shall be calculated on a sliding scale determined by the average of the monthly sales of all grades of line sisal fibre exported FOB from Tanga and Dar es Salaam as set out in the return submitted by the

Commissioner of Customs for the East African Territories to the Governor at the rate provided for in the Schedule hereto. The said monthly instalments shall be paid until such time as either the said balance of the purchase monies is paid or until the total fibre tonnage of 19,397 tons shall have been cut and accounted for, whichever shall first occur. The occupier agrees to pay interest at the rate of 5% per annum on each and every monthly instalment, remaining unpaid after the last day of each and every month, as aforesaid, until the date of payment and to accept as final the figures of the monthly instalment as shown in the said notice.

.....

(vi.) This offer must be accepted by the 31st December, 1950, after which date it ceases to be valid."

Apart from interest on overdue "instalments", no interest was payable on the balance of £174,600 at any time outstanding. There then follow provisions for the revocation of "this agreement for sale of a Right of Occupancy" in certain circumstances. Then comes a heading "Schedule" with sub-headings as follows:-

"Rates at which Balance of Purchase Monies to be Calculated.

Average FOB PRICE of Line Sisal Fibre	Amount Payable per ton "

The columns of figures thereunder are identical with those in the letter of the 30th of September, except in two instances where the differences might be unintentional or intentional, I do not know. I have not the Originals before me, and anyway Mr. Newbold for the respondent has not drawn attention to them. "Special Conditions" follow, which are not material to the appeals. Endorsed at the end

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is the acceptance by the appellant on the 31st of December, the last date prescribed therefor; it is in the following terms:-

"Ralli Estates Limited hereby accept a Right of Occupancy over the said Land referred to in the foregoing Offer and in the special Conditions annexed hereto.

Dated this 31st day of December 1950.

The Common Seal of Ralli Estates Limited was hereunto affixed in the presence of:) Common Seal of Ralli Estates Limited.

M.A. Carson)
G.C. Priest) Directors.

This letter with the endorsement does not appear to have been returned until the 31st of January 1951 for in a letter of that date addressed by the appellant to the Land Settlement Officer the final paragraph reads: "With regard to the Formal offer - without prejudice to the reservations which have already been made - we return the original sealed by us." The 'reservations' referred to are not, I think, material to this appeal."

It is admitted that the yearly rent of Shs.2/- an acre is a payment incurred in the production of income for the years in question and deductible under section 14 of the East African Income Tax (Management) Act. It is agreed that the sum paid by way of premium is or is part of the purchase price of the right of occupancy and unexhausted improvements and is of a capital nature. The dispute is with regard to the sums £70,300 and £104,300 totalling £174,600 expressed in the earlier documents to be 'balance due on Royalty' and referred to in the letter of the 20th December as the 'balance of such purchase monies, amounting to Shs.3,492,000' which were to be 'paid by monthly instalments'. I will, hereafter, refer to the various sums in pounds and not in shillings, as I think that this is easier to follow. It is common ground that owing to the high price of sisal fibre the whole of the £174,600 became payable and was, in fact, paid within two years and that the

Application of the scale resulted in payments totalling £94,326 in the year of income 1951 and £80,274 in the year of income 1952, together making the total of £174,600. It was not necessary to have recourse to the alternative basis of payment based on the cutting of a total fibre tonnage. The question is: Are the payments by the appellant company amounting to £174,600 out-goings and expenses wholly and exclusively incurred during the relevant years of income by the appellant company in the production of the income, that is payments of an income nature, as alleged by the appellant; or are they instalments of the purchase price, part of which was payable by instalments, of two sisal estates and payments of a capital nature, as is alleged by the respondent?

The question whether payments are of an income or a capital nature has frequently been considered under provisions of the English Income Tax Acts and Rules thereunder, for instance under Rule 3 (a) of Schedule D to the Income Tax Act, 1918, which reads:

> "3. In computing the amount of the profits or gains to be charged no sum shall be deducted in respect of (a) any disbursements or expenses not being money wholly or exclusively laid out as expended for the purposes of the trade, profession or vocation."

That is not the same wording as is employed in section 14 of the East African Income Tax (Management) Act, but I think that it and some of the other provisions are sufficiently similar to enable me to obtain guidance from the English authorities as to what are the principles which should be observed in deciding whether a particular payment is of the nature of an income, or of a capital payment. I propose, therefore, at this stage to refer to some broad principles established by the English authorities as to the way in which the question must be considered and then to apply those principles to the facts of the instant case.

Before considering the authorities which have been decided upon English Income Tax Acts, I ought to mention the case of Minister of National Revenue v. Catherine Spooner (1933) A.C. 684 (P.C.). That was an appeal from the Supreme Court of Canada.

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The respondent in that case had sold all her right, title and interest in land, which she owned in freehold, to a company in consideration of a sum in cash, shares in the company, and an agreement to deliver to her ten per cent (described as a royalty) of oil produced from the land. The company struck oil and paid to the respondent, in 1927, ten per cent of the gross proceeds of the oil produced, which she accepted in discharge of the royalty. The Supreme Court of Canada held that the sum so received was not an annual profit or gain within section 3 of the Income War Tax Act, but a receipt of a capital nature, and that, accordingly, the respondent was not chargeable to tax in respect of it. It was held by the Judicial Committee of the Privy Council that it was for the appellant to displace the view of the Supreme Court as being manifestly wrong and that he had failed to do so: the judgment of the Supreme Court was, accordingly, affirmed. The facts of that case differed from those of the present case. That was a case of a sale of freehold land: there was no relationship akin to that of lessor and lessee. The bargain was for a sum down, shares and a royalty receivable in oil, though in fact the proceeds were received in cash. Nevertheless, though the facts are different, assistance, can, I think, be derived from some of the principles laid down by their Lordships in that case. Lord MacMillan delivering the judgment of the Board said, at page 688:

> "The question whether a particular sum received is of the nature of annual profit or gain or is of a capital nature does not depend upon the language in which the parties have chosen to describe it. It is necessary in each case to examine the circumstances and see what the sum really is, bearing in mind the presumption that it cannot be taken that the Legislature meant to impose a duty on that which is not profit derived from property but the price of it..."

and at pages 689 and 690:

> "Capital may, no doubt, be expended in the acquisition of an income which, in the recipient's hands, becomes a proper subject of income tax, as was pointed out in the passage quoted from the judgment of Rowlatt J. in

Jones v Inland Revenue Commissioners (1929) 1 K.B. 711, 714, 715. But in the same volume, in a case where the liquidator of a company had sold its assets, including certain patent rights, to a new company for a sum in cash, a block of shares and a royalty on every machine sold, the same learned Judge had characterized the royalties as being "in effect payment by instalments of part of the purchase price of the property...."

Into which category then does the present case fall? Their Lordships agree with Newcombe J. that "the case is not without difficulties" as all cases must be which turn upon such fine distinctions, but they are not prepared to differ from the view of the transaction which that eminent Judge took, and that with which his colleagues all agreed - namely that "the respondent has converted the land, which is capital, into money, shares and 10% of the stipulated minerals which the company may win... there is no question of profit or gain, unless it be whether she has made an advantageous sale of her property." It was for the Minister to displace this view as being manifestly wrong. In their Lordships opinion he has failed to do so."

If the decision of the present appeal is to rest upon the ground that it is for the appellant to displace the view of Crawshaw, J. that the payments of balance of royalty or balance of purchase price (whichever it be called) were payments of a capital nature "as being manifestly wrong", then my judgment must be for the respondent, because, in my opinion, the appellant has not discharged that onus. Mr. Borneman, however, has attempted to distinguish Spooner's case on the facts and has urged us, in any event, not to follow Spooner's case on the ground that it has never since been relied on and is out of line with the trend of more modern cases in England. We are, of course, bound to follow a decision of the Privy Council and I should certainly do so; but the question whether the appellant has to displace the learned Judge's view as being 'manifestly' wrong does not arise in the present case, because the appellant has not even convinced me that the view of the Judge that the payments in question were not income

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payments is wrong. I have, on the admitted facts and correspondence, reached the same conclusion as the learned Judge. Apart from the question of what onus lies upon the appellant, there is nothing in Spooner's case with which the later English decisions are in conflict and I do not think that I am precluded by Spooner's case from deriving additional guidance from those decisions.

A great deal has been said in this case about form and substance. Mr. Borneman has argued that it does not matter what the parties put in their contract; it does not matter whether the sums in question were called royalties or balance of purchase price; what the court has to do is to ascertain the substance of the matter; the form is of little or no consequence. I agree that the substance of a transaction prevails over nomenclature. But that does not mean that, in arriving at the substance of the matter, the contract between the parties and their legal rights under it can be disregarded. As Lord Russell of Killowen said in the Duke of Westminster's case (1936) A.C. 1:

> "If all that is meant by the doctrine is that having once ascertained the legal rights of the parties you may disregard mere nomenclature and decide the question of taxability or non-taxability in accordance with the legal rights well and good... if, on the other hand, the doctrine means that you may brush aside deeds, disregard the legal rights and liabilities arising under a contract between the parties and decide the question of taxability or non-taxability upon the footing of the rights and liabilities of the parties being different from what in law they are, then I entirely dissent from the doctrine."

It appears that the true principle is that one must arrive at one's decision by ascertaining the substance of the matter by a careful consideration of the surrounding facts and of the contract which embodies the transaction and of the legal rights of the parties under it. Substance is to be ascertained Ogden v Medway Cinemas 18 T.C. 691, 695, but the form of the contract cannot be ignored and may be a very important means, sometimes the only means available, for ascertaining what the substance of the transaction is. As Lord

Wright (M.R.) said in Commissioners of Inland Revenue v Ramsay 20 T.C. 92:

> 'The decision in any particular case can only be arrived at by considering what is the substance of the transaction in question, and what is the substance of that transaction can only be ascertained by a careful consideration of the contract which embodies the transaction.'

Or, as Lord Clyde, L.P. said in Commissioners of Inland Revenue v Adam 14 T.C. 34:

> 'A great deal has been said about form and substance. I think that in a question of this sort, both form and substance must be considered.'

This passage was cited with approval by Macnaghten J. in Racecourse Betting Control v Wild 22 T.C. 182. The learned Judge continued:

> 'So, in the case before me, the question whether substance should be preferred to form or form to substance has during the argument emerged. The Solicitor General argued that the substance should govern the decision. Mr. Latter's argument on behalf of the Board was, as I understand it, this. You can only look at the legal obligations of the parties under the document in the case, whatever it may be, and he cited the decision of the House of Lords in the Duke of Westminster's case (1936) A.C. 1 in support of that view. I think Mr. Latter's contention is well founded."

On the other hand, the nature of a receipt or payment - whether it is a capital or an income payment - does not depend on the language in which the parties have chosen to describe it. Minister of National Revenue v Spooner supra; Commissioners of Inland Revenue v Rustproof Metal Window Co.Ltd. 29 T.C. 243, 271. Neither is the Court bound to accept a statement in a deed that the consideration for the use of patents is a certain sum, when it appears from an earlier agreement and the surrounding circumstances that the consideration expressed may not be the true consideration and, in such circumstances, the case may be remitted to the

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Commissioners to decide the true consideration as a question of fact. Patterson Engineering Co.Ltd. v Duff 25 T.C. 50. Nor is the Court bound to regard as conclusive a statement in a deed that 'sums shall be paid to and received by the Vendor as capital sums paid in respect of the purchase price.' "That of course is not conclusive of anything, because whether they are capital sums or not must be determined by a consideration of the substance of the transaction, the terms of the contract" per Lord Wright M.R. in Commissioners of Inland Revenue v Ramsay supra.

I think that the result of these authorities is that I must consider both form and substance. I must ascertain the substance of the transaction and, in so doing, I must carefully consider the contract between the parties which embodies the transaction and their legal rights and obligations under it; but the description in the documents of the payments in question as 'a balance of royalty' or as 'balance of purchase moneys' is not conclusive as to their nature.

Whether a payment is in the nature of a capital, or of an income, payment must depend upon the circumstances of each case; but there are certain guides and sign-posts pointing the way to a solution of this much-considered question which can be discovered from a study of the English authorities. I have read all those to which we were referred and many others. I will cite a few which appear to lay down principles of general application.

There is, first, the well-known principle enunciated by Lord Cave L.C. in British Insulated and Helsby Cables v Atherton (1926) A.C. 205 at p. 213:

> 'But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is a very good reason (in the absence of special circumstances leading to the opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital'

In the British Insulated & Helsby Cables case

the payment in question was a lump sum payment, paid once for all; but 'once for all' does not exclude payments by instalments being treated as capital payments. The test (in the absence of special circumstances) is whether the company has secured by the expenditure an advantage for the enduring benefit of its trade. Bean v Doncaster Amalgamated Collieries Ltd. 27 T.C. 296, 305, 309.

In Commissioners for Inland Revenue v Adam (supra) the respondent was in business as a carting contractor. It was necessary for him to remove and dispose of earth, slag, etc. For this purpose he entered into an eight years' agreement by which he undertook to deposit on certain land a minimum of 80,000 cubic yards of material in the period, at the rate of 10,000 yards a year. The consideration payable to the landowner was a sum of £3,200, payable by half-yearly instalments of £200 and, in addition, a sum of 4s. for every 5 cubic yards of material deposited in excess of 80,000. The Respondent in his accounts treated the acquisition of this right as an asset worth £3,200, writing off £400 each year and charging £400 to revenue. He contended that for Income Tax purposes the yearly payments were an expense of his business which should be deducted in computing his assessable profits. For the Crown it was contended that the sum of £3,200 was capital expenditure, or alternatively that the instalments were annual payments deduction of which is prohibited by Rule 3 (b) of the Rules applicable to Cases I and II of Schedule D. On appeal the Special Commissioners were divided in their opinions and gave a decision in favour of the Respondent. It was held (Lord Blackburn dissenting), that the £3,200 was a payment for a capital asset, and that no deduction by reference to it was admissible for Income Tax purposes.

The Lord President (Lord Clyde) said:

'The question is whether, in computing the Respondent's profits for the purposes of Income Tax, he is entitled to deduct from the gross profits of his business the two instalments of £200 each payable to account of the total price or consideration of £3,200 in each of the eight years. The answer depends upon whether the instalments are wholly and exclusively laid out for the purposes of the

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Respondent's trade within the meaning of subhead (a) of Rule 3 applicable to Cases I and II of Schedule D; or whether on the other hand they are sums employed or intended to be employed as capital in that trade, within the meaning of subhead (f) of that Rule. The point is similar to one which was raised and decided in Robert Addie & Sons' Collieries, Limited v Inland Revenue, 1924 S.C. 231, where I endeavoured to state the true issue thus - Are the sums in question part of the trader's working expenses, are they expenditure laid out as part of the process of profit-earning; or, on the other hand, are they capital outlays, are they expenditure necessary for the acquisition of property or of rights of a permanent character the possession of which is a condition of carrying on the trade at all?'

Jones v Commissioners of Inland Revenue 7 T.C. 314 was a case in which patents and goodwill were sold for £750 payable as to £300 by three instalments of £100 each, as to £450 by a 'royalty' and as to the balance by way of additional consideration a "further royalty of 10% upon the invoice price of all machines constructed under the said inventions and sold during a period of ten years". It was held that the "further royalty" did not constitute part of a capital sum but represented a share of the profits of the purchasing company, and formed part of the income of the appellant, and that as such it had been correctly included in the assessments of super tax made upon him. The facts of Jones' case and the transaction between the parties were entirely different from the facts and the transaction in the present case, but I cite it for the principles of general application laid down by Rowlatt J.:

> "I do not think there is any law of nature, or any invariable principle, that because you can say a certain payment is consideration for the transfer of property, therefore it must be looked upon as the price in the character of principal. It seems to me that you must look at every case, and see what the sum is. A man may sell his property for what is an annuity, that is to say, he causes the principal to disappear and an annuity to take

its place. If you can see that that is what it is, then the Income Tax Act taxes it. Or a man may sell his property for what looks like an annuity, but you can see quite well from the transaction that it is not really a transmutation of a principal sum into an annuity, but that it is really a principal sum the payment of which is being spread over a time, and is being paid, with interest, and it is all being calculated in a way familiar to accountants and actuaries, although taking the form only of an annuity. That was Scoble's case - when you break up the sum and decide what it really was. On the other hand a man may sell his property nakedly for a share of the profits of a business, and if he does that, I think the share of the profits of the business would be undoubtedly the price paid for his property, but still that would be the share of the profits of the business and would bear the character of income in his hands, because that is the nature of it. It was a case like that which came before Mr. Justice Walton in Chadwick v Pearl Life Insurance Company (1905) 2 K.B. 507. It was not the profits of a business but a man was clearly bargaining to have an income secured to him, and not a capital sum at all, namely, the income which corresponded with the rent which he had before."

In Commissioners of Inland Revenue v British Salmson Aero Engines Ltd. 22 T.C. 29, Finlay J. said:

"It is perfectly obvious....that it is quite possible that a licence may be granted or, for the matter of that, property may be sold partly in respect of a lump sum and partly in respect of an annuity or annual payment or payment for royalty or anything of that sort; ...."

In Commissioners of Inland Revenue v Mallaby Deeley 23 Tax Cases 158, the question was whether certain annual payments which Mr. Mallaby Deeley had covenanted to make to finance the publication of a literary work were of a capital, or an income, nature. Sir Wilfrid Greene M.R. (as he then was) said at page 166:

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"The distinction which is to be drawn for the purposes of the Income Tax Acts between payments of an income character and payments of a capital nature is sometimes a very fine and rather artificial one. It may depend upon - in fact it does depend upon - the precise character of the transaction. To take a simple case, if the true bargain is that a capital sum shall be paid, the fact that the method of payment which is adopted in the document is a payment by instalments will not have the effect of giving to those instalments the character of income. Their nature is finally determined by the circumstance that the obligation is to pay a capital sum, and instalments are merely a method of effecting that payment. On the other hand, to take another simple case, where there is no undertaking to pay a capital sum and no capital obligation in existence, and all that exists is an undertaking to pay annual sums, those may, in the absence of other considerations, be annual payments of an income nature for the purposes of the Income Tax Acts. The operation of that distinction in individual cases may present some appearance of unreality. Nevertheless, it is a distinction which is now well-founded, and the first question that arises in this case is this: what circumstances may be regarded for the purpose of the application of that rule? It is not disputed that a covenant to pay a lump sum by instalments is a covenant of a capital nature. It may be the purchase price of a business; it may be a pre-existing debt, and that particular method of liquidating it may have been selected .... It was suggested, on behalf of the Crown, that, provided there was present a mere intention to provide a sum expressed as a capital sum, and the covenant was a covenant to pay annual sums, that mere intention would be sufficient to bring the case within the rule to which I have referred. That is an argument which I must not be taken to be accepting for one moment. It seems to me that the cases to which we have been referred, and indeed the principle of the thing, must depend upon there being a real existing capital sum, not necessarily pre-existing but existing in the sense that it represents some kind of

capital obligation. If you had a case where a man merely made up his mind that he would like a covenantee to have a certain sum of money more than he had at present and then effectuated that intention by entering into a covenant to make annual payments, the sum which he thought of, which would in no real sense be a sum at all, would be no more than the motive for entering into the covenant to make the annual payments. On the other hand, if there is a real liability to pay a capital sum, either pre-existing or then assumed, that capital sum has a real existence, and, if the method adopted of paying it is a payment by instalments, the character of those instalments is settled by the nature of the capital sum to which they are related. If there is no pre-existing capital sum, but the covenant is to pay a capital sum by instalments, the same result will follow."

In Commissioners of Inland Revenue v Ramsay supra, Lord Wright M.R. said at page 92:

"The question involved in the case is the question which has so often to be debated where property has been sold, namely, whether the consideration is a sum of money, though payable in instalments, or whether it is an annuity. It is, of course, quite clear that for a lump sum of money the right to receive periodical payments may be purchased, and in that case if the transaction constitutes the purchase of an annuity and each one of these payments is in the nature of income, in the appropriate hands and in the appropriate manner it is taxable as such, but if that is not the case and the instalments are not annuities in the proper sense of the term, but are merely the method and the manner and the form in which a lump sum is paid, then the position is different, and the sums in question are not to be deemed income but capital, and accordingly in the hands of the payer when he comes to make his returns for Surtax cannot be deducted under the provisions of Section 27 of the Income Tax Act of 1918."

and at page 95:

"I cannot see why a creditor who has sold

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property for a particular price should not, in discharge of that price, agree to accept a fluctuating sum, if, as may be the case, and no doubt was the case here, there are sufficient reasons of convenience or other considerations which make it desirable to adopt that method of payment...."

and at page 97:

"...The conclusion I have arrived at, with great respect to the learned Judge, is that this is not the case of an annuity, or a series of annual payments. It is a case in which a capital lump sum has been stipulated as the price of a piece of property, and it is none the less so because the payment of that sum is to be made by instalments, instalments at certain specific periods, no doubt, but not instalments of a fixed price. It is none the less, in my judgment, a capital sum because in the working out of the transaction, and in the discharge of that capital sum, the Vendor according to the terms of the agreement may have to be content with a lesser amount than the £15,000. The £15,000 is not an otiose figure; it is a figure which permeates the whole of the contract, and upon which the whole contract depends. That being so, I think that the £886 in question was a sum in the nature of capital, and therefore that it was not competent for the Respondent to deduct it in returning his total income....."

and Romer L.J. at page 98 said:

"If a man has some property which he wishes to sell on terms which will result in his receiving for the next twenty years an annual sum of £500, he can do it in either of two methods. He can either sell his property in consideration of a payment by the purchaser to him of an annuity of £500 for the next twenty years, or he can sell his property to the purchaser for £10,000 to be paid by equal instalments of £500 over the next twenty years. If he adopts the former of the two methods, then the sums of £500 received by him each year are exigible to Income Tax.

If he adopts the second method, then the sums of £500 received by him in each year are not liable to Income Tax, and they do not become liable to Income Tax by it being said that in substance the transaction is the same as though he had sold for an annuity."

Applying the principles indicated in these cases to the payments in question in the present case, it will be useful first to ascertain, in the words of Lord Cave in British Insulated & Helsby Cables v Atherton supra whether the expenditure was incurred with a view to bringing into existence an asset or advantage for the enduring benefit of the trade or, as the test was stated by Lord Clyde in Adam's case supra, 'Are the sums in question part of the trader's working expenses, are they expenditure laid out as part of the process of profit earning; or, on the other hand, are they expenditure necessary for the acquisition of property or of rights of a permanent character the possession of which is a condition of carrying on the trade at all?' What was the consideration for the payments amounting to £174,000 sic? Mr.Hooton, for the respondent, says that they were part of the purchase price of two sisal estates, of a right of occupancy of the land and of the unexhausted improvements on it: that is that they were a part of the purchase price, payable by instalments, of an interest in land and permanent improvements, vehicles, chattels, etc. Mr. Borneman for the appellant argued that these payments were merely royalties 'geared to production' and to the current market price of sisal fibre; and that the consideration for them was merely the user of the land to produce sisal fibre, which he called "the right to exploit the sisal potential".

I have come to the conclusion that Mr. Hooton is right as to what the consideration for the payments was and that the £174,000 (sic) was paid as part of the purchase price of a 99 years' right of occupancy of two sisal estates and the unexhausted improvements thereon and machinery, vehicles etc., and not merely for the right to exploit 'the sisal potential'. I think that this is quite clear when the correspondence and documents, the surrounding circumstances, and the relevant Ordinances are considered. A leasehold interest may, of course, be the subject of a sale, and instalments of its

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purchase price may be capital payments (Green v. Favourite Cinemas Ltd. 15 T.C. 390). It is true that the valuation of each estate was based mainly on its potential production; but that was a method of arriving at its value to a purchaser. In the letter dated 7th April, 1950, from the Government of Tanganyika to the Sisal Board, referred to above, the Government wrote "It is proposed to base the valuation of each estate on its potential production". That did not mean that nothing was to be disposed of but a right of user. In the Foreword to the Catalogue it was said that it had been decided by Government to dispose of the 'former German-owned sisal estates' on a long term leasehold basis; and it was stated that all these sisal estates were being advertised for sale and that every applicant 'for the purchase of a sisal estate' must do certain things. There is no suggestion that all that was being sold was a right of user, a licence to exploit the sisal potential. What were being offered for sale were sisal estates on a long-term leasehold basis. Potential production is mentioned only because the sale price will naturally depend on it, on the value estimated by the annual profit that can be made out of the land (c.f. Constantinesco v Rex 11 T.C. 730 at p. 743). Obviously, what a purchaser will pay will depend on what he expects to make out of the estate; but that does not mean that he is buying only a right of user. Then follows a statement that the conditions of sale will include the offer of a right of occupancy (or lease) for 99 years, subject to payment of a premium, a royalty and a rent. The statement goes on "The premium and royalty will be related to the value of the unexhausted improvements on the land including leaf, building, machinery and equipment..." and the rent will be based on the unimproved value. It is to be noted (a) that both premium and royalty are to be related to the value of the unexhausted improvements; (b) that they are to be related to the value of the unexhausted improvements 'on the land'; and (c) that they are both to be related not only to leaf, but also to buildings, machinery and equipment. It is not correct, therefore, as I understood it to be suggested by Mr. Borneman, that premium only is related to unexhausted improvements. 'Royalty' is also related to these and is to be part of the purchase price of buildings, machinery and equipment which are clearly capital assets.

In the letter of the 30th September referred to above, it is said that the 'estates will be disposed of' on long agricultural leases: a yearly rental of 2/- per acre will be charged and payment of a premium and royalty will be required. Royalty is to be charged on a sliding scale based upon the the f.o.b. price of line fibre at the scheduled rates: royalties will be payable until, in the case of each estate, 'the whole balance' due by way of royalty has been extinguished, or until royalty has been paid on the tonnage liable to royalty, whichever occurs the earlier. In the details of the two estates given below there are columns for 'Total net capital value', 'premium' and 'balance due on royalty'. The sum of the 'premium' and 'royalty' make up the 'total net capital value' of the 'estates' which will be disposed of. 'Royalty' here is expressed to be part of the 'total net capital value' of the things sold, that is 'estates' on 'long agricultural leases'. The thing sold was not expressed to be a right of user, or a right to exploit the sisal potential, but estates on long agricultural leases or, more precisely, on a 99 years' right of occupancy. The letter of the 20th December makes this, if anything, still clearer. This document is headed 'Offer of a Right of Occupancy. The Land Ordinance (Cap. 115 of the Laws).' The letter, which is signed by the Land Officer, is addressed to Ralli Estates Limited (which company would be entitled to commence operations on the following day) and says that the Land Officer is directed by His Excellency the Governor to offer Ralli Estates Limited a right of occupancy over the specified land subject to the terms and conditions contained in, and annexed to, the letter. In this letter £491,600 (translating shillings into pounds) is described as "the full purchase monies" of which £449,646 is to be deemed to be in respect of the said land, buildings, immovable machinery, fixtures and effects and £41,954 is in respect of movables transferable by delivery. Of the full purchase price of £491,600, £317,000 is to be payable as premium and "the balance of such purchase monies, amounting to £174,600 is to be paid by monthly instalments and a notice informing the Company of the amount of each instalment is to be sent on or before the 15th day of each month." It will be observed that the expression 'royalty' has been dropped and what was previously called 'balance due on Royalty' is now called 'balance of such purchase monies'. This may have been, and

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probably was, done with an eye to the taxation position. Mr. Borneman first suggested that the Government through the Land Officer was not entitled to alter the nomenclature, because there was, before the 20th December, a concluded contract on the basis of the letter of the 30th September. Mr. Borneman pointed to paragraph 3 of the letter dated 26th October from the Member for Lands and Mines to Ralli Brothers Limited and said 'This is the offer which we accepted and paid ten per cent. This is a concluded contract. We paid £58,000 odd on 16th November, 1950'. I cannot agree that there was a concluded contract on 16th November, 1950 by payment of the £58,000 on the basis of the letter dated 26th October. The relevant part of that letter reads: "In accordance with the conditions of sale as set out in paragraph 3 of my letter under reference, I shall be grateful to receive your remittance representing 10% of the premium, after which a formal offer of a right of occupancy will be addressed to you as soon as possible..." It is clear that the payment of 10% was only a necessary preliminary to entitle Ralli Estates Limited to receive a formal offer, which they would have been still perfectly at liberty to decline. The formal offer was the letter of the 20th December and, in my opinion, there was no concluded contract before the 31st December, 1950, when Ralli Estates Limited sealed its acceptance of that letter. As found by the learned Judge, the acceptance does not seem to have been returned until 31st January, 1951. The Government was entitled to set out in the formal offer of a right of occupancy precisely the terms upon which that offer was made, and Ralli Estates Limited were entitled to object to anything to which they took exception at any time before the offer was accepted. They did in fact object to some of the terms and conditions; but they took no exception to the description of what had previously been termed 'balance due on Royalty' as 'balance of such purchase monies', though in correspondence they continued to refer to it as 'royalty'. But the point is not very material because, upon the authorities referred to above, the Court may disregard the nomenclature and is not bound to accept whatever label is put upon the payments by the parties, but should try to ascertain what, according to the substance of the transaction between the parties, these payments were. In my opinion, these payments

according to the substance and the form of the transaction were part of the purchase price of a right of occupancy of two sisal estates including land (with the mature and immature sisal thereon), buildings, machinery, effects, chattels and vehicles. The letter of the 20th December only stated with more precision what was already the substance of the negotiations between the parties.

A right of occupancy, is defined in section 2 of the Land Tenure Ordinance of Tanganyika as 'a title to the use and occupation of land....' It may be granted by the Governor for any definite term not exceeding 99 years (section 7). Section 18 of the same Ordinance provides that, subject to certain provisions irrelevant in the present case, "the occupier shall have exclusive rights to the land, the subject of the right of occupancy against all persons other than the Governor".

It appears that a certificate of occupancy is, at least for the purposes of the present case, equivalent to a lease and amounts to much more than a mere revocable licence to occupy would amount to in England. The Governor can only revoke a right of occupancy 'for good cause' e.g. for one or more of the reasons set out in section 10. A right of occupancy is something which devolves upon the death of the grantee. In the case of a right of occupancy granted to a non-native, it devolves as a leasehold forming part of his estate.(Section 12). Under the Land Registry Ordinance (Cap. 116) 'lease' includes a certificate of occupancy (section 2). Under section 5 (1) (b), any person entitled to a lease for an unexpired term of not less than five years may apply to be registered as owner of the lease; and, under section 44 (1) (b), registration of any person as the owner of an agricultural lease "shall vest in that person the possession of the land comprised in the lease for the unexpired residue of the term created by the lease, with all implied or expressed rights, privileges and appurtenances attached to the estate of the lessee, and free from all estates whatsoever including those of His Majesty".

It is plain, I think, that the grant, in Tanganyika, of a right of occupancy confers an estate or interest in land. What Ralli Estates Limited were buying was far more than a mere right of user -

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a 'right to exploit the sisal potential'; and the payments in question in this case were part of the purchase price of a 99 years' interest in land and of growing sisal, buildings and permanent improvements, as well as vehicles, chattels and effects - in short of sisal estates as going concerns. Accordingly, the payments in question were part of the expenditure incurred in bringing into existence an asset for the enduring benefit of the company's trade within Lord Cave's test in the British Insulated & Helsby Cables case supra.

Or, applying Lord Clyde's test in Adam's case supra the two payments amounting to £174,600 were part of the 'expenditure necessary for the acquisition of property or of rights of a permanent character the possession of which is a condition of carrying on the trade at all'. They were not merely 'part of the trader's working expenses, expenditure laid out as part of the process of profit earning'. According to Lord Clyde's test, this would make then 'capital outlays'.

Or, applying the test outlined by Rowlatt J. in Jones' case supra: Was this a sale for an annuity, or partly for an annuity? Did the Tanganyika Government, as regards these payments, "cause the principal sum to disappear and an annuity to take its place" or was this "not really a transmutation of a principal sum into an annuity, but really a principal sum the payment of which was being spread over a time and was being paid with interest"? Interest was payable on overdue instalments, though not on the outstanding balance of the £174,600. We do not know how the valuation of the estate was arrived at, except that the total fibre tonnage of 19,397 tons was said by Mr. Carson, a witness called by the appellant whose evidence there is no reason to distrust, to be based on mature and immature sisal on the estates at that time. The £174,600 may or may not have contained an element representing interest. As interest was to be payable on overdue instalments, that seems unlikely. But I do not think that that is material. For instance, no interest was payable in Ramsay's case supra, yet the payments were held to be capital payments. The point is: Did the Government of Tanganyika "cause the principal sum to disappear and an annuity to take its place" or was this £174,600 part of the principal

sum, payable for the estates, which was being spread over a time? In my opinion, it was the latter. The obligation was to pay the balance of the purchase price amounting to £174,600 by monthly instalments depending on production and the export price of line fibre; provided that, in certain circumstances (which did not occur), an obligation to pay by instalments a balance of the purchase price calculated according to the export price from time to time of a fixed tonnage of line fibre might have been substituted. In my opinion, Tanganyika Government did not, as regards these payments, 'cause the principal sum to disappear and an annuity to take its place'. The only annuity they took was the rent which they could only, under the Ordinance, charge on unimproved value. For the rest, they fixed a principal sum, part of which was permitted to be paid by instalments. There was a capital obligation - an obligation to pay by monthly instalments £174,600 balance of the purchase price or the aggregate of instalments based on a fixed tonnage of 19,397 tons of line fibre. In my opinion, these were capital obligations. It does not matter that the calculation of the instalments was 'geared to production' as Mr. Borneman phrased it and that the amount of the instalments might fluctuate or the sum of £174,600 be reduced. In Ramsay's case the annual payments were geared to profits, but they were nevertheless held to be instalments of capital.

Mr. Borneman has pressed upon us a dictum of Rowlatt, J. in Jones' case supra:

> "The property was sold for a certain sum, and in addition, the Vendor took an annual sum which was dependent, in effect, on the volume of business done; that is to say he took something which rose or fell with the chances of the business. I think when a man does that, he takes an income - that is what it is. It is in the nature of income, and on that ground I decide this case."

The correctness of that statement as laying down a general rule has not, however, been accepted in the Court of Appeal. In Ramsay's case supra Lord Wright M.R. said:

> "....it cannot, I think, be said as a general

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rule that if the amount of the instalments is one which is to fluctuate during the period in which they are payable according to certain circumstances, that is necessarily inconsistent with these instalments being instalments of capital, and that it necessarily involves that they must be treated as annual payments or annuities. The case of Jones v Commissioners of Inland Revenue, 7 T.C. 310, which was referred to, does contain a proposition to that effect by Rowlatt, J., in his judgment, but he was clearly there dealing with the facts of the case."

His Lordship quoted the passage from the judgment of Rowlatt J. cited above and continued:

"In my judgment, the learned Judge there was laying down that proposition with reference to the circumstances before him and did not intend, and I think could not rightly have intended, to state that as a universal proposition applicable to all cases of this character."

Commissioners of Inland Revenue v Ledgard 21 T.C. 129; and Commissioners of Inland Revenue v. Hogarth 23 T.C. 491 both make it clear that the fact that payments may depend upon, and vary with, the profits of a business is not decisive as to whether they are capital or income payments.

Commissioners of Inland Revenue v Ledgard supra was a case in which an agreement between partners provided that the purchase money for the share of a deceased partner should be a sum equal to one half of the share of profits, of the three years following his death, which would have been payable to such deceased partner had he continued to be a partner during those three years. It was held that the sum payable in respect of the deceased partner's share in the business was a single capital sum to be paid at the end of three years. In that respect Ledgard's case differs substantially from the present case, though it resembles the present case in that there was a vendor and purchaser agreement for an asset and that the payment was not expressed to be subject to deduction of income tax. In Commissioners of Inland Revenue v Hogarth supra an agreement was made between a retiring partner and the remaining partners (of whom

the Respondent was one) under which the former agreed to retire and, in settlement of his share in the capital, assets and profits of the business, was to be paid inter alia "a sum equal to one fourteenth part of the net profits of the business for the three years ending 31st December, 1937, 1938 and 1939 under deduction of income tax". It was held that this agreement dealt with the profits of the three years distributively and that the first payment made under the agreement was an admissible deduction for purposes of surtax, as claimed by the Respondent. But the decision turned not only upon the fact that the payments were to be made annually; but also upon the fact that the agreement was not a vendor and purchaser agreement for an asset and that there was provision (as there was not in Ledgard's case) for the payments to be subject to income tax. Ledgard's case and Hogarth's case each turned upon its special facts; but they are useful for the general principles enunciated in them and as illustrating that it is not an essential characteristic of a capital payment that it shall be quantified in advance. In Ledgard's case Lawrence J. quoted with approval a dictum of Scott L.J. in Dott v Brown (1936), 1 All E.R. 543, 550:

> "...Take a very simple case - a sale for a lump sum, which is to be paid ultimately by reference to certain subsequent considerations affecting the amount - a sort of arrangement that the ultimate sum payable may be higher or lower as the value of the property sold may turn out to be more or less - a perfectly natural and not uncommon transaction in the sale of certain types of property, particularly where goodwill is included in the sale. No fixed sum is there defined because the true essence of the transaction is that the consideration shall vary according to future calculations depending on certain facts. To say that, because in that transaction the sum might so vary it was not a capital payment, would be an erroneous conclusion."

In Hogarth's case commenting on Ledgard's case Lord Normand L.P. said at page 501:-

> "Accordingly, there again it was typically a vendor and purchaser agreement for an asset and although the sum was to be measured by the fluctuating profits of three years it was

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nevertheless the price for that asset. I think that is an important difference when the circumstances of the present case are compared."

A case on which Mr. Borneman strongly relied was Commissioners of Inland Revenue v. Rustproof Metal Window Co. Ltd. 29 T.C. 243. In that case a company granted to a licensee a licence to use a patent in the manufacture of boxes. The consideration for the licence was the payment of £3,000 and a royalty of 3d. per box. The question was whether the £3,000 was an income or a capital receipt. It was held by the Court of Appeal that it was an income receipt. Mr. Borneman particularly relied upon a passage in the judgment of Lord Greene M.R. at page 268 where, citing from Nethersole v Withers 28 T.C. 501, 512, he said:

> "If the lump sum is arrived at by reference to some anticipated quantum of user it will, we think, normally be income in the hands of the recipient."

The passage continues:

> "If it is not, and if there is nothing else in the case which points to an income character, it must in our opinion, be regarded as capital. The distinction is in some respects analogous to the familiar and perhaps equally fine distinction between payments of a purchase price by instalments and payment of a purchase price by way of an annuity for a period of years."

Both in the Rustproof Metal Window case and in the British Salmson case (supra) therein referred to the sums in question were merely sums payable (either per article manufactured or annually) for a licence to use an invention. In the present case, as has already been said, what was sold was not a mere licence to use, but an enduring asset, sisal estates on a 99 years' right of occupancy, interests in land and permanent improvements. I think that this is very different from a mere licence to use. In Ogden'v Medway Cinemas Ltd. supra a deed granting the goodwill of a cinema business in consideration of an annual payment contained an option to purchase the head-lease of the premises and goodwill for a lump sum. It was

held that the substance of the transaction was 'a revenue payment for the use, during a certain period of certain valuable things and rights'. It is to be noted that this was not an outright sale and purchase of the head-lease and goodwill. The document was construed as being in substance a grant of a right of user. Nethersole v Withers supra and Trustees of Earl Haig v Commissioners of Inland Revenue 22 T.C. 725 illustrate the distinction between the sale of a mere right of user, for example, a right to exploit a play as a cinematograph film, or a right to publish war diaries, and the sale of similar rights which also include a right to diminish the value of the copyright, e.g. by altering the play or, in the case of the diaries, by the mere publication. A transaction of the latter kind may involve the partial diminution of the value of the asset and is, therefore, a transaction of a capital nature. The transaction in the present case involves a right to diminish the value of part of the asset sold, certainly as regards buildings, machinery and vehicles and, upon this ground also, would appear to be of a capital nature. But I do not rely greatly on these rather special cases, because a capital asset may be sold for an annuity.

Mr. Borneman said, and it is better perhaps to put the argument in his own words: "Before you are on the capital road you must be able to say that, standing at the point of time of the contract, there is a lump sum to pay which, at that date, can be calculated with precision. If there is not such a lump sum at the beginning, then the amounts paid in liquidation of the sum are income and not capital." I agree that there must be a lump sum to pay; but I do not agree that it must be able to be calculated with precision at the time the contract was entered into. I think that, upon the appellant sealing and communicating its acceptance of the letter of the 20th December, there was a lump sum to pay in the present case, that is £491,600 of which £174,600 was payable by instalments and liable to fluctuation. This was a predetermined primary price, and the transaction was a capital transaction. The fact that in certain circumstances there might, if the price of sisal declined, have been substituted for £174,600 a lesser amount being the aggregate of instalments based upon a fixed tonnage of line fibre did not, in my opinion, alter the nature of the transaction

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into an income transaction any more than did the facts that in Ramsay's case the primary sum of £15,000 was liable to increase or diminish if the profits of the practice increased or declined and that in Ledgard's case the lump sum payable depended on the profits of the business and could not be ascertained or quantified in advance.

Ramsay's case (supra) was a case in which the respondent agreed to purchase a dental practice for a primary price of £15,000 subject to increase or diminution as therein provided. The primary price was to be satisfied by a payment of £5,000 down and by ten annual payments of a sum equal to 25% of the profits of the practice for each year. If the amounts so paid during the ten years were, in the aggregate, more or less than the balance of the primary purchase price, that price was to be treated as correspondingly increased or diminished. It was held that the annual sums paid under the agreement were instalments of capital. In Ramsay's case it would not have been possible, if the transaction was carried out by instalments as planned, to state with precision, standing at the point of time when the contract was entered into, what sum would be payable. It appears that that is not an essential criterion of a capital transaction. It was sought by Mr. Borneman to distinguish Ramsay's case on the ground that in that case the purchaser became at once liable to pay the £15,000, whereas in the present case the appellant did not become liable at the date the contract was entered into to pay £174,600. But in my opinion the appellant did, when it sealed and communicated its acceptance of the offer of the 20th December become liable to pay a purchase price of £491,600, subject only to this that there might in certain circumstances be substituted for £174,600 of that amount, a sum representing an aggregate of instalments calculated as stipulated on the proceeds of 19,397 tons of line fibre. I think that the £491,600 and the £174,600 are not otiose amounts and that they permeate the contract and the contract depends upon them. The fact that the £174,600 might have varied does not matter. The £174,600 was payable and was paid by instalments upon a vendor and purchaser agreement as the balance of the purchase price of a right of occupancy of the Lanconi and Mjesani estates. It was payable and paid for the creation of a capital asset in the hands of the company from which, no doubt, income would be derived.

Another case upon which Mr. Borneman strongly relied was Mackintosh v Commissioners of Inland Revenue 14 T.C. 18. The question was whether quarterly sums payable by surviving partners of the executors of a deceased partner for the right to continue to use the firm's name, marks and goodwill were to be treated as capital or income payments in the hands of the deceased partner's widow. It was held that they were to be treated as income. Rowlatt J. pointed out that the transaction was not a sale at all but merely a surrender to the continuing partners of the right to use the firm's name, marks and goodwill for five years in consideration of periodical payments, and that this was not paying for something by instalments but merely an arrangement for securing an income for a period of five years. I think that the facts of Mackintosh's case are too different from the facts of the present case to afford any assistance. As I have already said, in my opinion, the transaction in the present case was a sale of property (subject to a reversion) for a fixed sum, part of which was payable by instalments which might fluctuate but were not periodical payments for a mere right of user.

It remains to deal with the alternative argument, presented by Mr. Bechgaard, based on Ground of Appeal 2 (e) which reads:

> "In the alternative... the learned Judge erred in failing to hold that the said payments represented cost to the appellants of stock-in-trade of their business."

As I understood Mr. Bechgaard's argument, it was that the sum of £174,600 was paid in respect of growing sisal and that this was stock-in-trade of the appellant's business of running a sisal estate or estates and that a payment made for stock-in-trade was an "outgoing or expense wholly or exclusively incurred during the year of income in the production of the income" and was, therefore, deductible. I think that the answer to this submission is that the sums amounting to £174,600 were not paid in respect of growing sisal; but were part of the purchase price of a right of occupancy of the land, buildings and permanent improvements as well as of the growing sisal: they were part of the purchase price of the estates which were a capital asset from which income would be derived. I would respectfully adopt the words of Croom-Johnson J. in Commissioners of Inland Revenue v.

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Pilcher 31 T.C. 314 (cited by Mr. Bechgaard) at page 325:

> "I cannot see that there is anything in this case which leads me or should lead me to believe that this transaction, which was a purchase of land which happened to have a growing crop upon it, the benefit of which the purchaser was entitled to get, was other than what it is on the face of it expressly a purchase of a capital asset, with the result that the profits flowing from the capital asset in future will belong to the purchaser, but how that entitles the purchaser to say: "And now, please, we should like to debit a proportionate part of the capital sum which we paid for this asset as against those profits", is something I regret to say I am unable to follow."

See also Stow Bardolph Gravel Co. Ltd. v Poole 35 T.C. 459. I think that the case of Mohanlal Hargovind v Central Provinces and Berar Commissioner of Tax (1949) 2 A.E.R. 652 is distinguishable. In that case the contracts granted no interest in the land or in the trees or plants themselves. I think that Ground of Appeal 2 (e) fails.

So, in my opinion, does Ground of Appeal 2(d). In my view, the payments in question were not properly deductible in ascertaining total income in accordance with ordinary commercial principles, as alleged in that Ground of Appeal.

In my opinion, the learned Judge in the Court below came to a correct conclusion. I think that all the guides and signposts point to these payments amounting to £174,600 being capital, and not income, payments; and that to hold that they were 'outgoings and expenses wholly and exclusively incurred during the year of income... in the production of the income' would be to lose touch with the realities of the transaction.

I would dismiss the appeal with costs, and would grant a certificate for two Counsel.

Dated at Nairobi this twenty second day of May 1958.

K.K. O'CONNOR
PRESIDENT.

(B) THE HONOURABLE THE VICE PRESIDENT

JUDGMENT OF BRIGGS V.P.

I have had the advantage of reading the judgment of the learned President. I agree with his reasoning and with his conclusions, but I desire to add some remarks on certain aspects of the case.

I have no doubt whatever that the whole of the contract is to be found in the Land Officer's letter to the appellants dated 20th December, 1950, and the appellants' acceptance under seal dated 31st December, 1950. The previous negotiations cannot, I think, be allowed in any way to modify the construction of the contract, and I see no obscurities in it which they might serve to clarify. If and insofar as the final offer of Government departed in substance or in form from the general tenor of the previous negotiations, I think it quite possible that the changes were deliberately made with a view to ensuring that the sum of £174,600 should not be deductible for purposes of income tax. If this was so, Government was entirely within its rights in making the change.

I think that it is of interest to note how that sum was arrived at. It cannot, I think, be mere accident that the £70,300 for Lanconi is nine times 7,809, to the nearest hundred pounds, and the £104,300 for Mjesani is nine times 11,588, to the nearest hundred pounds, the figures 7,809 and 11,588 being the respective tonnages on which royalty (so-called) was to be payable. In the High Court the Crown wished to call evidence showing how the figure of £174,600 was arrived at, but it was excluded as irrelevant. I think, however, that one may infer that it represented £9 per ton of assessed probable production over a period, which was stated from the bar to have been 7 - 8 years. The schedule of rates shows that less than £9 would have been paid if the price of sisal did not rise above £85 per ton. It seems fair to suppose that in Government's view the full purchase price would have been burdensome to a purchaser at that level of prices and that some relief should be given. The relief might be anything up to £174,600 minus £19,397, or £155203 - over 30% of the total price. This large variation might suggest that Government was directly interesting itself in the future of the business; but I do

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not think that is correct. Government's real concern was presumably to fix a price which would not be so high as to deter suitable buyers, nor so low as to cause loss by sale at an undervalue. The business of sisal-growing is intensely speculative, and it may well be that a variable price was the best way to achieve this object. If the intention of Government had been to reserve an interest in the business as such, there was no reason to fix a ceiling for the so-called royalty: it would have been more natural to limit it only by duration, as in Jones' case, 7 T.C. 310. There is no ground whatever for suggesting that the contract did not represent the true, or the whole, transaction between the parties, and I think the sum of £174,600 was nothing more or less than a part of the purchase price, as the contract states.

I am not impressed by the argument that the rights obtained under a Right of Occupancy in Tanganyika are only rights of user, and are essentially different from a freehold or long leasehold title in England. The circumstances of Tanganyika as regards dealings in public land are peculiar, if not unique, and the interest in the land which the appellants acquired was the largest interest which, in all the circumstances and having regard to current practice in Tanganyika, they could acquire, or Government could offer them. The essential difference between a title of this kind and the short leases previously granted appears clearly from the description of the covenants in those short leases, which My Lord has quoted, and the conditions governing the appellants' present title. For example, the latter contains no provision for maintenance of buildings. User is to be agricultural, but is not otherwise controlled, save for the special and limited purposes of drainage, etc., and soil-preservation. The obligations in this respect appear to be little, if at all, greater than would attach by law to a freehold. Substantially this was a sale of a "permanent" title to land so equipped, and in conjunction with such movables, as to constitute the whole a valuable profit-making business. It was in the most obvious sense a sale of a capital asset.

It is to be observed that, although in their own accounts for the period of eight months ending 31st August 1951 the appellants charged the "royalty" so far paid against current production, in

their balance sheet for the same period they showed a sum of £80,274, the outstanding balance of the sum of £174,600, as a contingent liability. If it was a mere revenue charge, to be incurred only upon and in respect of future production, this would appear to be somewhat unusual accounting. True, they did not take credit for the £174,600 in the 1952 balance sheet as a capital payment, but they wrote up their fixed assets on directors' valuation by about £50,000 and added a note referring to the £174,600, presumably as evidence that the writing-up was justified. That it was justified cannot be doubted.

If, as I think, the payments making up the sum of £174,600 were instalments of a variable purchase price, the only outstanding question is whether Government had agreed to "take an income", as Rowlatt J. expressed it in Jones' case, instead of capital payments. That would not, admittedly, be conclusive that, qua the appellants, the payments were revenue payments; but I accept Mr. Borneman's submission that it would be a strong indication to that effect. Apart from Jones' case, which I would distinguish on the ground given by the learned President, I think the cases most strongly relied on by the appellants can be distinguished quite shortly. In Ogden v Medway Cinemas Ltd., 18 T.C. 691, the sub-lease was for a relatively short period, only thirteen years, and the payments in question were really a "rent" for use of the goodwill over that period. This was emphasized by the option given to acquire the property in the goodwill and the head-lease for a lump sum. In Racecourse Betting Control Board v Wild, 22 T.C. 182, the right acquired by the Control Board was a licence to occupy certain buildings erected for the purpose on race days only, which were said to amount only to about 17 days a year, and over a period of no more than twenty-one years. No tenancy was created. The Board paid an annual sum which was sufficient to cover the capital cost of the buildings, but that was held to be immaterial. The payments were clearly of a revenue nature and for the use of the buildings over a limited period. Hogarth's case, 23 T.C. 491, can best be considered by comparing it with Ledgard's case, 21 T.C. 129. The fine, but, if I may say so with deference, legitimate distinction drawn in those cases need not be described in detail, but I think that Lord Normand's comment, at

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23 T.C. 501, that "it was typically a vendor and purchaser agreement for an asset and although the sum to be paid was to be measured by the fluctuating profits of three years it was nevertheless the price for that asset", shows that the present case is analogous to Ledgard's and not to Hogarth's. In C.I.R. v British Salmson Aero Engines Ltd., 22 T.C. 29, the asset acquired was an exclusive licence to manufacture for a period of ten years under patents owned by the French company. Finlay J. said, "I cannot regard the fact that this is an exclusive right as turning a licence into a sale of property". I have no doubt that in the present case there was a sale of property and not merely the temporary grant of a right of user. Mallaby-Deeley's case, 23 T.C. 153, turned on the fact that the true nature of the transaction was to be ascertained not from one document, but from two. It does not appear to me to assist the appellants. In C.I.R. v Rustproof Metal Window Co., 29 T.C. 243, the payment in question was again for the right to manufacture under patents and was held to be of a revenue character, although it was a lump sum and stated by the parties to be a capital sum; but much stress was laid on the fact that the right was only to manufacture a limited number of articles. This was said to be inconsistent with a capital transaction.

The general argument for the appellants was that the sum of £174,600 must, having regard to the whole of the negotiations, be treated as a sum paid for the right to exploit the "sisal potential" of the estates and that, since it was dependent on quantum and value of production, it had all the characteristics of a true revenue royalty. I think the basic fallacy of this is that, if one buys agricultural land (and in that expression I include the acquisition of a right of occupancy for 99 years), one does not separately acquire the land and the right to make a profit by using it. If I may quote Finlay J. once more (from the British Salmson case at p.35), "it seems to me to be not the reality of the thing". The reality of this transaction was the sale of an agricultural business for a single purchase price, which might fluctuate within fixed limits, in accordance with the turnover of the business, and part of which was payable over an uncertain period by instalments. Nothing in that, in my opinion, detracts from the essentially capital nature of the transaction. I agree that the appeal should be dismissed with costs, and that there should be a certificate for two counsel.

NAIROBI.
22nd May 1958

F.A. BRIGGS
VICE-PRESIDENT.

(C) THE HONOURABLE MR. JUSTICE FORBES

In the Court of Appeal for Eastern Africa

No.16

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JUDGMENT OF FORBES J.A.

I agree and have nothing to add.

A.G. FORBES
JUSTICE OF APPEAL.

NAIROBI.
22nd May, 1958.

No.17

ORDER OF THE COURT OF APPEAL

No.17

Order of the Court of Appeal, 22nd May 1958

In Court this 22nd day of May, 1958.

Before the Honourable the President (Sir Kenneth O'Connor)
the Honourable the Vice-President (Mr. Justice Briggs)
and the Honourable Mr. Justice Forbes, a Justice of Appeal.

O R D E R

This Appeal coming on for hearing on the 14th, 15th and 16th days of April, 1958, in the presence of R.E. Borneman, Esquire of Her Majesty's Counsel and K. Bechgaard, Esquire, of Counsel for the Appellants, and J.C. Hooton, Esquire, and H.B. Livingstone, Esquire of Counsel for the Respondent IT WAS ORDERED that this Appeal do stand for Judgment and the same coming for judgment this day IT IS ORDERED (a) that this Appeal be and is hereby dismissed; (b) that the Appellants do pay to the Respondent the costs of this Appeal; (c) that the Respondent do have costs of two counsel in this Court.

GIVEN under my hand and the Seal of the Court

In the Court of Appeal for Eastern Africa

No.17

Order of the Court of Appeal, 22nd May 1958 - continued.

at Nairobi, this 22nd day of May, 1958.

F. HARLAND.
REGISTRAR.

ISSUED at Nairobi this 4th day of July, 1958.

I certify that this is a true copy of the original.

for REGISTRAR.
4.7.1958.

No.18

Order granting Conditional Leave to Appeal to Her Majesty in Council, 27th August, 1958.

No.18

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

O R D E R

In Chambers this 27th day of August, 1958.

Before the Honourable the President (Sir Kenneth O'Connor).

UPON application made to the Court by the above-named Applicants on the 21st day of July 1958, for Conditional Leave to Appeal to Her Majesty in Council under Section 3 of the East African (Appeal to Privy Council) Order-in-Council, 1951, AND UPON HEARING the Counsel for the Applicants and the Counsel for the Respondent THIS COURT DOTH ORDER that the Applicants DO HAVE leave to appeal under paragraph (a) of Section 3 to Her Majesty in Council from the Judgment and Order of the Court, above-named, subject to the following conditions :

1. That the Applicants do within ninety days from the date hereof enter into good and sufficient security, to the satisfaction of the Registrar, in the sum of Shillings ten thousand (a) for the due prosecution of the appeal (b) for payment of all costs becoming payable by them to the Respondent in the event of (i) the Applicants not obtaining an order granting them final leave to appeal or (ii) the appeal being dismissed for non-prosecution or (iii) the Privy Council ordering the Applicants

to pay the Respondent's costs of the appeal or any part of such costs;

2. That the Applicants shall apply as soon as practicable to the Registrar of the Court for an appointment to settle the record and the Registrar shall thereupon settle the record with all convenient speed and that the said record shall be prepared and certified as ready within ninety days from the date hereof;

3. That the Registrar, when settling the record, should state whether the Applicants or the Registrar shall prepare the record, and if the Registrar undertakes to prepare the same, he shall do so accordingly, and if, having so undertaken he finds he cannot do or complete it, he shall pass on the same to the Applicants in such time as not to prejudice the Applicants in the matter of the preparation of the record within ninety days from the date hereof;

4. That if the record is prepared by the Applicants, the Registrar of the Court shall at the time of the settling of the record, state the minimum time required by them for examination and verification of the record, and later examine and verify the same so as not to prejudice the Applicants in the matter of the preparation of the record within the said ninety days;

5. That the Registrar shall certify (if such be the case) that the record (other than the part of the record pertaining to final leave) is or was ready within the said period of ninety days;

6. That the Applicants shall have liberty for extension of times aforesaid for just cause;

7. That the Applicants shall lodge their application for final leave to appeal within fourteen days of the date of the Registrar's certificate above-mentioned; and the Applicants, if so required by the Registrar, shall engage to the satisfaction of the said Registrar to pay for a type-written copy of the record (if prepared by the Registrar) or for its verification and for the costs of postage payable on transmission of the type-written copy of the record, officially to England and shall, if so required, deposit in Court the estimated amount of such charges.

In the Court of Appeal for Eastern Africa

No.18

Order granting Conditional Leave to Appeal to Her Majesty in Council, 27th August, 1958 - continued.

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the Intended Appeal.

GIVEN under my hand and the Seal of the Court at Nairobi, the 27th day of August, 1958.

F. HARLAND.
REGISTRAR.

ISSUED at Nairobi this 27th day of August 1958.

I certify that this is a true copy of the original.

for REGISTRAR.
27.8.1958.

No.19

Order granting Final Leave to Appeal to Her Majesty in Council, 2nd December, 1958.

No.19

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

O R D E R

IN CHAMBERS this 2nd day of December, 1958.

Before the Honourable Mr. Justice Gould, a Justice of Appeal.

UPON the Application presented to this Court on the 26th day of November, 1958 by the Advocate for the above-mentioned Applicants AND UPON READING the Affidavit in support thereof of K. Bechgaard sworn on the 25th day of November, 1958, AND UPON HEARING K. Bechgaard, Esquire, Advocate for the Applicants, and le Champion, Esquire, Advocate for the Respondent, THIS COURT DOTH ORDER that the Application for Final Leave to Appeal to Her Majesty in Council be and is hereby granted AND DOTH DIRECT that the Record including this Order, be despatched to England within fourteen days from the date of issue of this Order AND DOTH FURTHER ORDER that the costs of this Application do abide the result of the Intended Appeal.

GIVEN under my hand and the Seal of the Court at Nairobi, the 2nd day of December, 1958.

F. HARLAND.
REGISTRAR.

ISSUED this 3rd day of December, 1958.

I certify that this is a true copy of the original.

for REGISTRAR.
CDP. 3.12.58

In the Court of Appeal for Eastern Africa

No.19

Order granting Final Leave to Appeal to Her Majesty in Council, 2nd December, 1958 - continued.

PART II

No.20

AGREED CORRESPONDENCE AND DOCUMENTS

No.20

Agreed Correspondence and Documents. (a) Government Notice No.228 of 1948.

AGREED CORRESPONDENCE AND DOCUMENTS

(a) GOVERNMENT NOTICE NO.228 of 1948

GOVERNMENT NOTICE NO.228.

THE GERMAN PROPERTY (DISPOSAL) ORDINANCE, 1948. (ORDINANCE NO.24 OF 1948)

REGULATIONS

(Made by the Governor under Section 31 of the German Property (Disposal) Ordinance, 1948).

THE GERMAN PROPERTY (DISPOSAL) REGULATIONS 1948.

1. These regulations may be cited as the German Property (Disposal) Regulations, 1948.

2. In these regulations - "the ordinance" means the German Property (Disposal) Ordinance, 1948; "Valuer" means a valuer appointed by the Governor under section 6 of the Ordinance.

3. (1) Subject as provided in sub-regulations (2)

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Agreed Correspondence and Documents.
(a) Government Notice No.228 of 1948 - continued.

and (3) of this regulation, in valuing a German estate for the purposes of section 6 of the Ordinance a Value shall be the amount which a bona fide purchaser might reasonably be expected to pay for such estate, having due regard to the condition of the same, or to the bringing of the same to proper and productive condition, in accordance with its user at the date of valuation, so that after taking into consideration the ruling commodity and produce prices, costs and rental values, together with any probable trends thereof, he would be able while maintaining the same to gain a fair reward or profit in return for his risk and enterprise or a fair return on the capital invested, or both, as the case may warrant.

(2) In assessing the value of a German Estate which is held under a right of occupancy, a valuer shall take into account the unexpired term of such right of occupancy only, with no consideration for unexhausted improvements or for probable renewal of the right of occupancy.

(3) In assessing the value of a freehold German estate, a Valuer shall take into consideration the rents reserved under rights of occupancy in the vicinity granted at or about the date of valuation.

4. The Custodian may charge in respect of every German Estate transferred to the Governor under section 5 of the ordinance fees equal to two and one half per centum of the value of such German estate as assessed under section 6 of the said Ordinance.

(b) General Notice No.1251 of 1950.

(b) GENERAL NOTICE NO.1251 OF 1950

"General Notice No. 1251:

DISPOSAL OF EX-ENEMY SISAL ESTATES.

It is notified for public information that the Selection Committee appointed to consider applications for the Ex-enemy Sisal Estates and to advise

Government to whom they should be offered on long term lease, will consist of:

Sir Claud Seton M.C. Chairman.
The Member for Agriculture and Natural Resources.
The Hon. J.F.R. Hill Acting Member for Development

The Hon. I.C. Chopra. M.L.C.
J.H. Wallace Esq.

The first session of the Committee will be held as soon as possible after the end of September 1950, the precise date being announced later.

Dar es Salaam, 21st August, 1950. N.H.VIGARS HARRIS
Acting Member for Lands & Mines"

(c) APPLICATION BY RALLI BROTHERS LIMITED TO LAND SETTLEMENT DIVISION

CONFIDENTIAL.

TANGANYIKA

LAND SETTLEMENT DIVISION

Telegraphic Address :- "LANDSET, DAR ES SALAAM"

APPLICATIONS FOR SISAL ESTATES

QUESTIONNAIRE

Please ensure that every point is dealt with in your answers, if applicable. It is emphasised that incorrect information may result in consideration of your application being deferred.

1. (a) Name: Ralli Brothers Limited
(If a Company)

(b) Where incorporated: In England.

(c) Registered Office address: 25, Finsbury Circus, London, E.C.2.

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Agreed Correspondence and Documents. (c) Application by Ralli Brothers Limited to Land Settlement Division, - continued.

(d) Nominal paid up and reserve capital: Nominal £4,200 Issued and Fully paid £3,200,000: Unissued £1,000,000. Capital and Revenue Reserves £4,753,580: Total Issued Capital and Reserves £7,953,580

2. Sisal Planting experience: Ralli Brothers Limited have been interested in Sisal production in Tanganyika since 1934, when they became Selling Agents for Sisal Estates, and made advances for production and development. Since the outbreak of the War in September 1939 they have been the Managers of the Sisal Estates detailed in Section 5 of this Questionnaire. During the years of Ralli Brothers Management since 1939 these Estates have produced over 30,000 tons of Sisal.

(a) Where:

(b) Extent of operations - give production figures:

(c) Period of experience.

3. State briefly your plans concerning the properties, if acquired:

To complete the consolidation of the Mjesani Lanconi Estates into one Unit and as a first step to equip and develop that Unit up to an annual production of 4500 tons, employing sound agricultural methods, to include a period of fallowing between crops to maintain the fertility of the soil. Further expansion of production would be governed by World demand prospects and other conditions ruling at the time. To improve the processing by introducing artificial Dryers and Flume Tow Reclamation Plant, as soon as suitable machinery is available.

To rest the Kilulu Estate and to take steps to regenerate the soil of the Estate which is showing signs of exhaustion.

We attach a Memorandum of our proposals for Mjesani/Lanconi in which we provide for 1400 hectares to revert to Native use, and for the preservation of 2375 hectares of Forest areas. See Appendix A.

4. Short summary of interests other than sisal planting.

Ralli Brothers Limited are Merchant Bankers and have interests in many parts of the World including Egypt, the Sudan, South and East Africa. In East Africa they are importers of Gunnies, Piecegoods and other Articles; Exporters of Cotton, Sisal Oilseeds, Kapok, etc. They are part Owners of a Cotton Ginnery in Uganda, and are the sole Owners of the Dindira Tea Estate in the Usumbaras, Tanganyika. They are sole Owners of a Cotton Ginnery in South Africa and are also growing Cotton at Magut in Natal. Sisal growing is one of the objects included in the Companies Memorandum of Association.

5. For which estate or number of estates do you wish to apply? You are advised to give alternatives in order of preference.

The Lanconi and Mjesani Estates - C.E.P. Ref. Nos. T.1512 and T.1513

The Kilulu Estate - C.E.P. Ref. T.1514.

6. Financial resources:-

(a) What liquid capital have you available for the purchase and development? Supply either bank reference, a copy of last balance sheet or other factual evidence of position:

A print of the last Balance Sheet of the Company dated 31st August 1949 is attached.

(b) Will it be necessary to increase your share capital or make further calls on shares not fully paid?:

No - but a Subsidiary Company will be formed in Tanganyika to own and work the Estates, and Ralli Brothers Limited will provide the Capital needed.

7. Do you own or have you any interest in any land in Tanganyika? If so, give full particulars.

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(a) Type

	A	B	C	D
	Dindira Tea Estate	Residential Plots Dar es Salaam	Residential Plots Dar es Salaam	Inoffensive Factory Area Dar es Salaam
(b)	Approximate area:			
	4500 acres	Oyster Bay Plots 74 and 77	Kingsway Plots 22 and 23	Pugu Area Plot 38
(c)	Type of tenure:			
	Freehold	99 year leasehold	Freehold	99 year leasehold
(d)	Extent of interest:			
	Sole Owner	Sole Owner	Sole Owner	Sole Owner

8. Any other information in support of your application:

Before the war the Estates were the property of the following Companies -

Lanconi Sisal Estate - United Sigi Segoma Estates Limited. Incorporated in Tanganyika.

Mjesani Sisal Estate - Mjesani Estates Limited. Incorporated in Jersey.

Kilulu Sisal Estate - Kilulu Estates Limited. Incorporated in Jersey.

The subscribed Share Capital was German - the loan Capital of the Companies was British.

Early in 1936 Ralli Brothers Limited were approached to make advances to the Companies, and in May 1936 they advanced a total of £100,000 on joint and several First and Second Mortgages over the whole of the properties and assets of the Companies. Ralli Brothers Limited London were at the same time appointed Selling Agents for the Companies - The above advances were made to enable the Companies -

(a) To repay outstanding secured loans and unsecured creditors.
(b) To provide funds for development.
(c) To enable the German Leasehold to be freeholded.

Further advances were made to the Companies in 1938 and 1939, and on the outbreak of War the total outstanding indebtedness to Ralli Brothers Limited was approximately £103,000.

By arrangements with the Companies, on the outbreak of War Ralli Brothers Limited took charge of the Estates, but the Custodian intervened and the Companies were declared to be Enemy Companies on the 14th January, 1940. Ralli Brothers were appointed by the Custodian to Manage the Estates on his behalf, at a Commission of 2½% on the sale proceeds of Sisal derived from the Estates. The Companies however were in serious financial difficulties, with unsecured creditors pressing for payment, and eventually the Government, agreed to re-vest the properties in the Companies, under British Boards of Directors approved by the Government, and with Ralli Brothers Limited Tanga as Manager with effect as from 1st June 1940. Ralli Brothers Limited then made further advances to pay off Unsecured Creditors and to provide funds for new equipment and development and at 30th June 1946 the outstanding advances amounted to £121,772 and had been higher. Ralli Brothers Limited also assisted the Companies by foregoing a part of the interest due to them on the First and Second Mortgages.

These concessions of interest amounted to a substantial sum and the full rates of interest of 6½% on First Mortgage and 7% on Second Mortgage were only collected as from 1st July, 1944. The reduced rates of interest were as follows:

1st September 1940 to 30th June 1941 - ½%
1st July 1941 to 30th June 1942 - 5%
1st July 1942 to 30th June 1944 - 6%

The Companies worked under their own Boards of Directors until 30th June 1948, when they were again declared to be Enemy Companies - the properties were re-vested in the Custodian and later transferred by him to the Government. The United Sigi Segoma Estates Limited and Messrs. Ralli Brothers Limited were however left in charge of the Estates to manage them on behalf of the Custodian as Agent for the Government, and they are still acting in this capacity.

When - shortly after the outbreak of the War - the Government decided to Lease Enemy Sisal Estates, Messrs. Ralli Brothers Limited applied to have these Estates leased to them, but were refused, without

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Agreed Correspondence and Documents. (c) Application by Ralli Brothers Limited to Land Settlement Division - continued.

any reason being given, although as Mortgagees they had a stronger claim to be Lessees of these Estates than had other Parties who applied for, and were granted Leases of other Enemy Estates. Throughout their period of Management Ralli Brothers Limited Tanga have been remunerated by the Commission of 2½% fixed by the Custodian in 1939: down to 30th September 1945 they had the use of the Group Secretarial and Accounting Staff in Tanga, but as from 1st October 1948 Ralli Brothers Limited took over this Staff and Office, and provided Secretarial and Accounting Services in Exchange for an Office Allowance. This total cost of Management, and Secretarial and Accounting services has averaged slightly less than Sh. 30 per ton of production throughout the whole period.

The profits from working down to 30th June 1948 have accrued wholly to the Companies, and will fall into the Reparations fund, along with the value of the Estates as at 30th June 1948: the profits of working since 1st July 1948 have accrued to the Tanganyika Government.

Under all the circumstances set out in this application, Ralli Brothers Limited feel that they have a strong claim to favourable consideration and they ask for the Estates to be offered to them.

Date August 1950 Signature .....

APPENDIX A

PROPOSALS FOR THE AMALGAMATION AND DEVELOPMENT OF THE MJESANI/LANCONI SISAL ESTATES

The following proposals are the result of eleven years Management of the Estates, and in the opinion of Ralli Brothers Limited provide the best method of securing efficient production, economical working, maintenance of soil fertility, and good conditions for Labour.

The combined area of the two Estates in 10898 hectares, but after deducting land to be released for Native use, and the area to be preserved under Forest, referred to below, the area which can be devoted to Sisal production is approximately 7123 hectares. On this acreage it is estimated that a regular annual production of 5/6000 tons might be achieved under careful methods of cultivation,

including a three year system of fallowing to restore the fertility of the soil. 4500 Tons is the objective of the programme in view for the next few years.

The Native population bordering the Estate is increasing and it is proposed that approximately 1400 hectares of land should revert to Native use.

Measures should also be taken to protect the climatic conditions of the area, and for this purpose to preserve a considerable area under existing Forest, to attract precipitation to protect the left bank of the Sigi River, to avoid erosion on deforested steep slopes, and generally to protect water courses and drainage.

We attach a Statement shewing the combined areas of the Estate and setting out the above proposals, and also a plan, on which we have shewn the areas already developed with Sisal, the forest area to be retained and the land to be returned to Native use. Under the Lanconi Section in the Statement, we shew two columns of figures for Sisal areas. The first column "M" adds up to 1400 hectares and is land agreed to be sold by the United Company to the Mjesani Estate before the War, and developed by that Estate in the manner shewn. "L" is the present Sisal development on Lanconi. This pre-war sale was not given effect to by a legal Conveyance, but has been carried through in the Accounts of the two Companies.

It may be thought that an area of 7123 hectares should be divided into two, or perhaps three, separate Estates, but there are many reasons which make it advisable to avoid this separation, and to complete the amalgamation of the two Estates which has already been started. The principal reasons are as follows:

1. The Lanconi area is hilly and difficult to work, and the production from that area needs to be averaged with cheaper production from elsewhere. Transport and labour costs are high, weed growth is heavy, cutting and cleaning tasks are lower than on Mjesani, and Lanconi is a more expensive producer.

2. A production of 4500 tons will support the engagement of more expert Staff than can be

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provided on a smaller production, particularly when Sisal working margins are reduced, as must eventually happen.

3. It is better for the Labour force in the area to come under one Management, because a substantial proportion is recruited Labour, particularly for the heavy tasks, such as Cutting, Trolley Boys, Corona Boys, etc. Local Labour is unreliable in turnout and will usually accept only cleaning tasks. Good conditions for recruited Labour, Medical care and recreational amenities, can be more generously provided and maintained, on a large production.

4. If these Estates are acquired by Ralli Brothers Limited, long term plans of development (which are already in mind) will be supplied them. Experience shews that progress in the Sisal Industry must go on, through good times and bad, and only by long term planning can a sound and balanced Estate be built up.

5. Having nursed these Estates from an insolvent position in 1939 to one of prosperity in 1950, Ralli Brothers Limited are desirous of becoming permanently interested in the Sisal Industry through the ownership of these Estates. It would not however interest them if the area were divided into two or three separate Estates. They do not consider it worth their while to embark on a sisal propodition (sic) with less than a minimum potential production of 4/5000 tons.

(d) Certificate of Occupancy.

(d) CERTIFICATE OF OCCUPANCY

L.O. No.12248
M.P. No.30583

CERTIFICATE OF OCCUPANCY

The Tenth day of December One thousand nine hundred and fifty four.

Title No. 9889

THIS IS TO CERTIFY that RALLI ESTATES LIMITED a Limited Liability Company incorporated in Tanganyika and having its Registered Office at Tanga

(hereinafter called "the Occupier") is entitled to a Right of Occupancy in and over the land described in the Schedule hereto (hereinafter called "the said land") and more particularly delineated on the plan annexed hereto for a term of Ninety-nine years from the First day of January One thousand nine hundred and fifty-one according to the true intent and meaning of the Land Ordinance and subject to the provisions thereof and to any regulations made thereunder and any enactment in substitution therefor or amendment thereof and to the covenants implied in Right of Occupancy under the provisions of the Land Regulations 1948 save as hereinafter mentioned and to the following special terms and conditions viz:

1. The Occupier shall pay during the said term the rent of Shillings Forty-five thousand four hundred and four (Sh.45,404/-) to be paid yearly in advance without any deduction on the First day of January in each year during the said term PROVIDED ALWAYS that the said rent shall be subject to revision by the Governor after the expiration of Twenty years from the date of commencement of the said Right of Occupancy and shall also be subject to revision of further revision after the expiration of every subsequent period of Twenty years throughout the term of the said Right of Occupancy provided that such revision may take place only within Five years after the above mention revision dates.

2. The said land shall be used solely for agricultural purposes and for purposes ancillary thereto.

3. This Right of Occupancy is subject to the Land Regulations 1948 except Condition (a) set out in sub-regulation (1) of Regulation 6, Conditions (e) and (f) of sub-regulation (2) of Regulation 6 and sub-regulations (3) and (4) of Regulation 6.

4. The Occupier hereby covenants:-

(a) To make adequate arrangements for drainage and disposal of waste product and effluent from any factory or factories which may be hereafter erected on the said land;

(b) to take all measures which may be necessary for the protection of the soil and the

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No.20

Agreed Correspondence and Documents. (d) Certificate of Occupancy - continued.

preservation of soil fertility and for the prevention of soil erosion on the said land and to cultivate the said land in such manner as not to cause soil erosion outside its boundaries as aforesaid, and further to take any measures which may be required by the Director of Agriculture to achieve such objects.

5. No transfer or sub-lease of the said land or any part thereof during the first Five years of the term hereby granted shall be approved by the Governor except in exceptional circumstances of which the Governor shall be sole judge. The occupation or working of the said land or any part thereof by any person other than the Occupier or its employees or contractors (as such) shall be deemed to be a sub-letting for the purposes of this condition.

6. The said land is believed and shall be taken to be herein correctly described. No error omission or misdescription of the said land shall invalidate the said Right of Occupancy nor be the subject of compensation by either the Governor or the Occupier.

7. There are excepted and reserved out of this Right of Occupancy:-

(a) All existing bridges roads and highways in public use crossing the said land.

(b) Any existing road gang camp used in connection with the surveying, constructions or maintenance of such roads and highways.

THE SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT piece or parcel of land situate in the Tanga District having an area of Twenty-two thousand seven hundred and two (22,702) acres as delineated on Survey Plan No. E 2212/6925 annexed hereto and thereon edged in red.

GIVEN under my hand and seal and by Order of the Governor the day and year first above written.

LAND OFFICER ( ) Sgd./.....
( )
TANGANYIKA TERRITORY ( ) LAND OFFICER.

The within-named RALLI ESTATES LIMITED hereby accepts the terms and conditions contained in the

foregoing Certificate of Occupancy.

SEALED with the COMMON SEAL of the said RALLI ESTATES LIMITED and delivered in the presence of us this day of 1954.

(Signature) J.P. PARASCHIS
(Postal Address) P.O. Box 401, Kampala
(Qualification) Director.

(Signature) G.C. PRIEST.
(Postal Address) P.O. Box 409, Tanga.
(Qualification) Director.

(e) LETTER RALLI ESTATES LIMITED TO LAND SETTLEMENT DIVISION, 29th DECEMBER 1950

CONFIDENTIAL

TANGA,
29th December, 1950.

The Land Settlement Officer;
Department of Lands & Mines,
DARESSALAAM.

Dear Sir,

MJESANI AND LANCONI ESTATES

Your letter of the 27th December 1950 addressed to Messrs. Ralli Brothers Limited, and the Offer of a Right of Occupancy in our name enclosed therewith, were considered at a Meeting of the Board of Directors of this Company this morning, and we regret that we find the terms and Special Conditions unacceptable. In this respect we are in the same position as other applicants on whose behalf a letter has been addressed to His Excellency the Governor on the 22nd December 1950, by the Tanganyika Sisal Growers Association.

We have no doubt that the objections which

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (e) Letter Ralli Estates Limited to Land Settlement Division, 29th December 1950 - continued.

have been taken against the Offers of Occupancy in their present form, will be satisfactorily smoothed out between Government and the Applicants, and therefore strictly without prejudice we shall in due course pay the instalment due on the 24th January, 1951: also without prejudice we enclose our cheque for Shs.49,445 - being the first year's rent of Shs.47,000 and Shs.2,445 the fees payable for the preparation and registration of Title Deeds.

With regard to the survey of the land, we have already instructed Mr. F. Hinderlick to make the survey, and we understand that he has written to the Chief Surveyor, Daressalaam, requesting the survey data and instruction, and we should be glad if you would expedite these instructions to enable the survey to proceed without loss of time.

Our objections to the present offer are as follows:

Clause 3: First it seems to us that your split-up of the purchase moneys is not correct, and taken in conjunction with clause 3 (ii) suggests that you have included the Royalties twice, once in sub-clause (ii) and again in the figure of Shs.8,992,920/- mentioned in clause 3. Without accepting your grouping of immovable and moveable machinery, we think the purchase consideration should be set out as follows:

1.	Shs.	5,500,920	Land, buildings, immovable machinery, fixtures and effects.
2.	"	839,080	Movable Machinery, Chattels, vehicles and other effects capable of manual delivery.
		6,340,000	
3.		3,492,000	Royalty.
		9,832,000	

Second, we shall be glad to know which items of immovable machinery in the lists attached to the Offer, are included in the sum of Shs.5,500,920 and their value: also the items of movable machinery which are included in the sum of Shs.839,080 and their value. Government cannot be unaware of the provisions of the Income Tax (Consolidation) Ordinance 1950, and a detailed valuation of every item sold to us cannot be supplied, it is however necessary that there should be a separation of the total valuation into the classification of Buildings, and

Machinery established in the Sisal Industry, for depreciation allowance under the above Income Tax Ordinance.

Clause 3 (ii): The proposed method of computing Royalty on production at an average price for the Industry is contrary to the proposals made in the letter of the 30th September 1950, which clearly indicated that these payments would be dealt with in the case of each Estate separately; our royalty liability should be determined from our own Sales.

We can see no difficulty in arranging for the Royalty to be paid to the Customs Authorities on behalf of the Government, at the time of shipment along with the Sisal Export Tax. Production is rarely, if ever, shipped in the month of production and the price of Sisal FOB per ton, can only be computed when the shipment is made. The Monthly Statement of Production is not always correct, whereas shipments are conclusive.

Clause 3 (iii): Please let us have a statement shewing how you arrive at the Stamp Duty of Shs. 180,802.

We come now to the Special Conditions which we find to be so onerous and extraordinary as to be unacceptable: moreover they were not disclosed in the Catalogue relating to the Disposal of the Ex-German Estates, and to our minds they are of such a nature, that they should have been disclosed at the time applications were invited, and cannot now be introduced at this late hour. The conditions of sale set out in the Catalogue state that the conditions of the Right of Occupancy will be governed by the Land Ordinance and the Regulations thereunder - that is to say the Land Ordinance Cap 113 and the Land Regulations 1948.

We have examined the Ordinance and Regulations and we find nothing therein to support the special Conditions now introduced, and we should be glad if you would refer us to the authority on which you have based the conditions set out in 6 (a) to 6 (e).

Clause 9 of the Special Conditions denying water rights is at complete variance with the advertised particulars of the Estates, in which the nature and quantity of the Water Supply was given; Sisal Estates cannot work without an adequate supply of water, and we have to ask that the water in the Sigi River be granted to us.

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents.
(e) Letter Ralli Estates Limited to Land Settlement Division, 29th December 1950 - continued.

We cannot help but feel that a grave misunderstanding has occurred in the preparation of the offer, and we should be glad to have an opportunity of considering with you the matters referred to in this letter at your early convenience.

Yours truly,
RALLI ESTATES LIMITED
Sgd/..M.A.Carson.
Director.

(f) Letter Land Settlement Division to Ralli Estates Limited, 8th January 1951.

(f) LETTER LAND SETTLEMENT DIVISION TO RALLI ESTATES LIMITED, 8th JANUARY 1951.

No.L.S./5010/R-1093 DEPARTMENT OF LANDS AND MINES
DARESSALAAM, 8th January 1951.

CONFIDENTIAL.

The Director,
Ralli Estates Limited,
P.O. Box No.172,
TANGA.

Sir,

I have the honour to reply to your confidential letter dated 29th December 1950 and shall deal with your enquiries and objections as follows:-

2. It is noted that you find the terms and conditions unacceptable and state that you are in the same position as other applicants on whose behalf a letter has been addressed to His Excellency the Govenor on the 22nd December 1950 by the Tanganyika Sisal Growers Association. A reply to that letter was written by the Member for Lands and Mines and copy thereof forwarded to you. I cannot add anything thereto but trust that the objections which have been taken will be smoothed out as suggested in the second paragraph of your letter.

3. It is noted that you will pay the instalment of purchase price due on the 24th January 1951, without

prejudice, and similarly that you enclose your cheque for Shs.49,445/-, being the first year's rent and fees payable for the preparation and registration of the title deeds. Two receipts, No.72606M and 72604M are forwarded herewith acknowledging receipt of that sum.

4. I cannot agree with your views on the manner in which the purchase monies should be split up and am unable to give you full details regarding the manner in which the purchase price was arrived at or supply all the details you ask for in the paragraph marked "Second" on page 2 of your letter. These matters have been discussed previously with the Income Tax authorities and even though you got material from us it would not necessarily mean that it would be accepted by that department. What arrangements you make with the Income Tax Department must be agreed upon mutually between you.

6. Attached herewith is a list of the movable items of a total value of Shs.839,038/- on which no stamp duty was charged. The stamp duty was assessed as follows:-

The value of the movable items referred to above was deducted from the total purchase price leaving a total of Shs.	Sh.	8,992,920
on which ad valorem stamp duty was assessed at 20/- per Shs.1,000/-	"	179,860
Add to that lease duty on the annual rent of Shs.47,000/- at 20/- per Shs.1,000/-	"	940
Plus Shs.2/- for the certificate	"	2
making a total of ...	Sh.	180,802

7. Clause 3 (ii) sets out the manner in which the balance of the purchase price will be collected, and it will be based on the average FOB price of line sisal fibre shipped monthly from Daressalaam and Tanga, and assessed monthly on the sisal produced on each estate sold and not as you suggest on the fibre sold by the Estate and shipped.

8. With regard to your further objections to Special conditions I can do no more at this stage than refer you to the letter written by the Member for Lanes and Mines and referred to above, but would be glad, as suggested in your last paragraph, to discuss any matters with you if you can arrange to call at this Office.

I have the honour to be,
Sir,
Your obedient Servant,
Sgd./ Land Settlement Officer.

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (g) Letter Ralli Estates Limited to Land Settlement Division, 10th January 1951.

(g) LETTER RALLI ESTATES LIMITED TO LAND SETTLEMENT DIVISION, 10th JANUARY 1951

CONFIDENTIAL

TANGA,
10th January, 1951.

The Land Settlement Officer,
Department of Lands and Mines,
Dar es Salaam.

Dear Sir,

MJESANI AND LANCONI ESTATES

We thank you for your letter of the 8th January 1951 and we have also received a copy of the reply from the Member for Lands and Mines to the Sisal Growers Association dated 3rd January 1951. We are pleased to see that the terms of the future Leasehold Titles are likely to be agreed and on the strength of the assurances which have been given with regard to Water Rights, we shall be prepared to accept a Leasehold Title on the terms and conditions set out in Paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 of the Special Conditions.

We understand that the whole of Clause 6 is to be omitted, and that Government will rely on other Legislation dealing with the matters included therein. This we feel to be the right decision, because existing legislation prescribes formal procedures, creates Statutory Bodies and gives Rights of Appeal, all of which safeguards were taken away by Clause 6, and moreover a most drastic additional penalty was imposed under Clause 12 - namely - revocation of the Right of Occupation. Offences such as those envisaged in Clause 6 are properly punishable by fines or imprisonment on the guilty persons; whereas revocation of the title would inflict loss and damage on innocent third parties and would render Rights of Occupation valueless as security for advances.

We have one point to put before you as regards the rent, namely that it would be reasonable to charge a lower rent than Shs.2 per acre on the 6,000 thousand of hectares of additional land, after the survey had been completed, it will not be possible to render that land productive for at least five years, and only after the expenditure of a large sum on opening up and development, and we

therefore think that a nominal rent should be charged for the first five years.

With regard to the survey, Mr. Carson will be in Dar es Salaam on the 11th/12th instant and he will call upon you.

We thank you for the details of movable assets and stamp duty, and we also note your remarks, as regards Income Tax. We understand that these matters are to be discussed between Representatives of the Sisal Growers Association and the Member for Lands and Mines, and we await the outcome of that meeting, before dealing with these matters.

Before closing this letter, we feel that we must in fairness to ourselves refer to paragraph 2 of the letter from the Member dated 3rd January 1951. You will recollect that on or about the 17th November 1950, you suggested payment of the second instalment of 50% from Messrs. Ralli Brothers Limited of Dar es Salaam, and it was pointed out to you that in our view the second instalment was not due until after we had received the Formal Offer with Inventories, and had accepted. You however stated that owing to the large amount of detail work involved, it would be some time before the Formal Offers could be sent to us, that the Inventories, would be the same as those prepared by the Custodian Department for the purposes of valuation, of which we had copies, and that we must pay the 50% forthwith. It is true that the paragraph in question states that application for details could have been made to the Director of Lands and Mines, but that is merely evading the issue because all correspondence has been with you as Land Settlement Officer.

Yours truly,
RALLI ESTATES LIMITED.
Sgd. M.A. CARSON.
DIRECTOR.

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (h) Letter Land Settlement Division to Ralli Estates Limited, 16th January 1951.

(h) LETTER LAND SETTLEMENT DIVISION TO RALLI ESTATES LIMITED, 16th JANUARY 1951

CONFIDENTIAL

DEPARTMENT OF LANDS AND MINES,
DAR ES SALAAM
TANGANYIKA TERRITORY.
16th January, 1951.

The Director,
Ralli Estates Limited,
P.O. Box No.172,
TANGA.

Dear Sir,

MJESANI AND LANCONI ESTATES

I would refer to your letter dated 10th January 1951. It is noted that you are prepared to accept the leasehold title on the terms and conditions set out in paragraphs 1,2,3,4,5,7,8,9,10,11 and 12 of the Special Conditions.

2. I would inform you that it has not been agreed that the whole of clause 6 is to be omitted. As a result of an interview with the Acting Member for Lands and Mines by a Deputation of Lessees, it was agreed that the question of the inclusion of Clause 6, or any part thereof, in the Rights of Occupancy should be submitted to the Land Utilization Board. It will be an item on the Agenda of the Meeting to be held on the 8th February 1951. The Deputation informed the Acting Member for Lands and Mines that it would recommend to all who had received offers, that they should sign the acceptance and make the payments provided for therein, before the 14th January 1951, the extended date for acceptance, subject to any alteration in the terms and conditions which might be made arising out of the representations under consideration as aforesaid.

3. All but a few have now signed and paid. Your Company has not yet executed the documents or paid the stamp duty. I would be obliged if you would arrange for it to do so. Any subsequent alteration will be effectuated by an ancillary document and incorporated in the Certificate of Occupancy after survey.

4. Your request regarding rent for the undeveloped part of Lanconi Estate has been submitted for consideration.

5. The matter of Stamp Duty and Income Tax should be taken up with the appropriate authorities.

6. The mode of the payment of the balance of the purchase monies was also discussed with the

deputation and the proposals submitted are receiving attention.

7. In view of the above your letter of the 14th instant does not call for a reply.

I have the honour to be,
Sir,
Your obedient servant,
J.J. Real.
Land Settlement Officer.

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents.
(h) Letter Land Settlement Division to Ralli Estates Limited, 16th January 1951 - continued.

(i) LETTER RALLI ESTATES LIMITED TO LAND SETTLEMENT DIVISION, 31st JANUARY 1951

(i) Letter Ralli Estates Limited to Land Settlement Division, 31st January 1951.

TANGA,
31st January, 1951.

REGISTERED CONFIDENTIAL

The Land Settlement Officer,
Department of Lands and Mines,
DAR ES SALAAM.

Dear Sir,

MJESANI AND LANCONI ESTATES

We duly received your letter of the 18th instant and the delay in replying has been due to the absence of the undersigned from Tanganyika, and also because we have been expecting to receive some definite news concerning the Meetings between Representatives of the Applicants and the Member for Lands and Mines.

In the meantime the balance of 40% has been paid in London to the Crown Agents on the 24th January 1951, as required by the formal offer, so that the full amount of the premium has been paid.

We note that you leave us to deal with the proper Authorities over Income Tax and Stamp Duty. We believe that under the stamp duty ordinance the legal obligation to present the documents to the Stamp Authorities for the correct computation of

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents.
(i) Letter Ralli Estates Limited to Land Settlement Division, 31st January 1951 - continued.

Stamp Duty rests with the purchaser, and as the documents will not be ready until the survey has been completed, we think it is unreasonable to ask for the deposit of such a large sum as Shs. 180,000/- now and we shall be glad to have your agreement to this amount standing over until it becomes due.

With regard to the Formal Offer - without prejudice to the reservations which have already been made - we return the original sealed by us.

Yours truly,
RALLI ESTATES LIMITED.
Sgd. M.A. CARSON.
DIRECTOR.

(j) Letter Ralli Estates Limited to Regional Commissioner of Income Tax, 13th December 1951.

(j) LETTER RALLI ESTATES LIMITED TO REGIONAL COMMISSIONER OF INCOME TAX, 13th DECEMBER, 1951

RALLI ESTATES LIMITED TO REGIONAL COMMISSIONER OF INCOME TAX, Dar es Salaam, dated 13th December 1951

" We have received the Official copy signed by you of the Custodian's letter to you dated 27th August 1951, setting out the residual values at 31st December 1950, of certain assets on the Mjesani Estate, sold to this Company as at that date.

We shall be glad to know whether it is the purpose of that letter, to fix the residual values as at 31st December 1950, which will be allowed by you to us, in the Income Tax Assessments of this Company.

We should also be glad to receive the corresponding Statement in respect of the corresponding assets on the Lanconi Estate, also purchased by this Company as from 31st December 1950."

(k) LETTER REGIONAL COMMISSIONER OF INCOME TAX TO RALLI ESTATES LIMITED, 12th JANUARY 1952

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents.
(k) Letter Regional Commissioner of Income Tax to Ralli Estates Limited, 12th January 1952.

East African Income Tax Department, Daressalaam, to Ralli Estates Limited, dated 12th January, 1952.

" Your letter dated 13th December is acknowledged.

It is the purpose of the letter dated 27th August to fix the residual values which will be allowed to your Company.

10 I attach the corresponding Statement for the Lanconi Estate.

I trust that this gives the information you require".

(1) ACCOUNTS OF RALLI ESTATES LIMITED
FOR 8 MONTHS ENDING 31st AUGUST, 1951

RALLI ESTATES LIMITED

INCORPORATED IN TANGANYIKA TERRITORY - SUBSIDIARY OF RALLI BROTHERS LTD.

BALANCE SHEET 31st AUGUST 1951

	£ Shs.Cts. Authorised	£ Shs.Cts. Issued	£ Shs.Cts.
CAPITAL			
Ordinary shares of Shs.20.00 each	500,000. 0.00	250,000. 0.00	250,000. 0.00
REVENUE RESERVES			
General Reserve			75,000. 0.00
Profit for eight months ending 31st August 1951 unappropriated			57,350.19.58
Total Capital and Reserves			382,350.19.58
CURRENT LIABILITIES AND PROVISIONS			
Loan from Ralli Brothers, Limited - Unsecured		11,589.16.57	
Creditors and accrued charges		49,003. 5.27	
Labourers Deposits		3,906.19.60	64,500. 1.44
Provision for Income Tax			45,000. 0.00

CONTINGENT LIABILITIES - NOT INCLUDED IN THE ABOVE BALANCE SHEET

1. Royalty payable to the Tanganyika Government on 17503 Tons of line fibre sisal to be produced after 31st August 1951 or in the alternative until the Royalty paid on the average price F.O.B. of line Sisal Fibre exported after 31st August 1951 shall amount to 80,274. 0.00

11. The Custodian of Enemy Property has made a claim for Shs.78,735 not admitted by the Company, and legal proceedings are pending - say - 4,000. 0.00

111. Estimated liability in respect of Machinery ordered 18,000. 0.00

102,274. 0.00

		£ Shs.Cts.	£ Shs.Cts.
FIXED ASSETS			
Premium paid to the Tanganyika Government for the purchase of the Mjesani and Lanconi Sisal Estates and additional undeveloped land, the whole subject to Survey not yet completed, and to be held under a Right of occupancy for 99 years from 1st January 1951, including Sisal Development Buildings, Labour Camps, Plant and Machinery and all other moveable chattels and effects on the Estates at 1st January 1951, plus additions thereto by the Company as follows:-			
Premium for Mjesani Estate		189,800. 0.00	
Premium for Lanconi Estate		127,200. 0.00	
Total Premiums		317,000. 0.00	
Deposits for preparation of Title Deeds and Stamp Duty		9,162. 7.00	
Survey Fees		310. 9.80	
		326,472.16.80	
Add: Additions by the Company during the period ending 31st August 1951 - including expenditure to date on Capital Works in progress:			
Mjesani Estate		22,876.19.71	
Lanconi Estate		5,627.12.90	
		354,977. 9.41	
Less: Estimated Provision for exhaustion of Sisal Areas and Depreciation of other wasting assets:			
Mjesani Estate		16,392.16.00	
Lanconi Estate		9,299. 6.00	329,285. 7.41

N.B. It is not possible at the date of this Balance Sheet to divide the above total over the assets acquired because Schedules detailing the separate assets have not yet been received from the Tanganyika Government. The Board of Directors are however of the opinion that the total value of the above Assets is at least equal to the amount at which they are stated. A detail analysis under appropriate headings will appear in the next Balance Sheet of the Company.

Carried Forward 491,851. 1.02

Carried Forward 329,285. 7.41

RALLI ESTATES LIMITED

BALANCE SHEET 31st AUGUST 1951 (Contd.)

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (1) Accounts of Ralli Estates Limited for 8 months ending 31st August, 1951 - continued.

	£ Shs.Cts.		£ Shs.Cts.	£ Shs.Cts.
Brought forward	491,851. 1.02	Brought forward		329,285. 7.41
		CURRENT ASSETS		
		Sisal Stocks unshipped at F.O.B. Value less provision for Export Tax and Royalty	54,022. 5.00	
		Ralli Brothers Limited - Shipments at F.O.B. Selling Prices	67,123. 6.42	
		Stores on hand and in transit - at cost	24,336.16.17	
		Sundry Debtors	1,628. 1.85	
		Payments in advance	7,619. 5.03	154,729.14.47
		Balance at Bank and Cash in Hand:		
		At Bank	7,713.15.67	
		In Hand	122. 3.47	7,835.19.14
	£ 491,851. 1.02			£ 491,851. 1.02

M.A. CARSON DIRECTOR

J.P. PANASCHIS DIRECTOR

REPORT OF THE AUDITORS TO THE MEMBERS

We have audited the above Balance Sheet. We have obtained all the information and explanations we have required. In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of our information and the explanations given to us and as shown by the books of the Company.

MOMBASA.

22nd December 1951.

COOPER BROTHERS, DEGLAS, SEEX & CO.

CHARTERED ACCOUNTANTS

RALLI ESTATES LIMITED

PROFIT AND LOSS AND APPROPRIATION ACCOUNT FOR THE EIGHT MONTHS ENDING 31st AUGUST 1951

	£ Shs.Cts.	£ Shs.Cts.		£ Shs.Cts.	£ Shs.Cts.
HEAD OFFICE AND GENERAL EXPENSES			GROSS PROFIT FROM SISAL PRODUCTION AND SALES ACCOUNTS:		
Office accommodation, staff etc.	2,400. 0.00		Mjesani Estate	142,834. 2.51	
Travelling expenses	242.12.89		Lanconi Estate	58,574. 2.72	
Postages, cables, stationery and telephone charges	220.19.15				201,408. 5.23
Sigi House Maintenance	378. 7.22				
Sundries	207. 8.39		Sundry receipts		5,267. 1.58
		3,449. 7.65			
Land Rent		1,566.13.28			
Leave pay and passages		1,386.19.97			
Auditors fees and expenses		178.10.00			
Exchange and bank charges		1,389.12.51			
Bonuses to staff		6,407. 9.42			
SPECIAL CONTRIBUTIONS					
Labour welfare fund	1,787.10.00				
Provident fund	1,625. 0.00				
		3,412.10.00			
Directors fees and special remuneration		2,333. 5.00			
		20,124. 7.83			
Interest on loan		6,327. 8.40			
Preliminary expenses - written off		2,872.11.00			
Provision for Income tax		45,000. 0.00			
		74,324. 7.23			
Transfer to general reserve		75,000. 0.00			
Balance carried to Balance Sheet		57,350.19.58			
		£ 206,675. 6.81			£ 206,675. 6.81

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (1) Accounts of Ralli Estates Limited for 8 months ending 31st August, 1951 - continued.

RALLI ESTATES LIMITED

MJESANI SISAL PRODUCTION AND SALES ACCOUNT FOR EIGHT MONTHS ENDING 31st AUGUST 1951

	Labour	Stores	Total	Per Ton
PRODUCTION EXPENSES				
Field work	154,566.38	35,593.86	210,160.24	121.06
Cleaning mature areas	40,779.00		40,779.00	35.49
FACTORY EXPENSES				
Power		33,068.00	33,068.00	19.05
Other costs of decorticating, drying, brushing and baling	92,581.21	38,486.72	131,067.93	75.50
Maintenance of buildings, plant and machinery	14,143.36	30,777.10	44,920.46	25.88
INDIRECT EXPENSES				
Maintenance houses, camps, roads and boundaries	34,581.40	12,666.01	47,247.41	27.21
Motor vehicles	3,176.76	14,336.39	17,513.15	10.09
Medical and hospital	18,435.34	11,852.83	30,288.17	17.44
Office clerks and stationery	8,063.61	3,213.97	11,277.58	6.50
Water boys, messengers and Askaris	13,209.48	639.60	13,849.08	7.98
Recruiting and repatriation		83,567.48	83,567.48	48.14
Sundries and stores transport	12,590.18	16,005.83	28,596.01	16.47
Workshop	4,110.93	6,412.27	10,523.22	6.06
Fire Insurance		12,943.77	12,943.77	7.46
Vermin fighting	4,168.45	76.50	4,244.95	2.44
	400,406.12	319,640.33	720,046.45	414.77
Staff salaries, allowances and contribution to provident fund			64,063.71	36.90
Labour welfare			11,315.86	6.52
			795,426.02	458.19
Estimated provision for depreciation and amortisation: Sisal Areas		164,343.00		94.67
Buildings and machinery etc.		163,513.00	327,856.00	94.19
			1,123,282.02	647.05
F.O.B. EXPENSES ETC.				
Transport, go-down expenses and F.O.B. Charges		61,686.62		35.53
Sisal cess		17,060.00	78,746.62	9.85
			1,202,028.64	692.41
Balance carried to profit and loss account			2,856,682.51	1,645.55
		Shs.	4,058,711.15	2,337.96

	Tons			Per Ton
SALES DURING THE PERIOD				
For export C.I.F.	1,415.50		5,223,543.19	3,690.25
Less: Freight		210,189.43		
Marine and war risks		28,537.48		
Brokerage		19,592.76		
Selling commission		65,115.89		
Del credere		8,397.45		
Draft Discount		96.32	331,929.33	234.50
F.O.B. proceeds			4,891,615.86	3,455.75
Less: Export tax		175,095.25		123.70
Royalty paid to Tanganyika Government		1,328,822.50	1,503,917.75	938.76
			3,387,696.11	2,393.29
Add: Net proceeds of flums tow	7.00		7,242.04	1,034.58
	1,422.50		3,394,938.15	2,386.60
STOCK AS AT 31st AUGUST 1951				
1. Estimated net F.O.B. value less export tax and Royalty:				
Line fibre/tow	290.50	636,500.00		
Flume tow	17.00	13,600.00		
		650,100.00		
11. Realised proceeds Kange Fibre	6.00	13,673.00		
	313.50		663,773.00	2,117.30
Production	1,736.00		4,058,711.15	2,337.96
		Shs.	4,058,711.15	2,337.96

RALLI ESTATES LIMITED

LANCONI SISAL PRODUCTION AND SALES ACCOUNT FOR EIGHT MONTHS ENDING 31st AUGUST 1951

	Labour	Stores	Total	Per Ton
PRODUCTION EXPENSES				
Field Work	102,354.79	20,237.99	122,592.78	151.72
Cleaning mature areas	31,865.28		31,865.28	39.44
FACTORY EXPENSES				
Power		16,211.84	16,211.84	20.06
Other costs of decorticating, drying, brushing and baling	47,392.33	15,497.35	62,889.68	77.84
Maintenance of buildings, plant and machinery	2,708.77	7,344.74	10,053.51	12.44
INDIRECT EXPENSES				
Maintenance houses, camps, roads and boundaries	20,340.17	17,141.10	37,481.27	46.39
Motor Vehicles	1,283.18	10,235.96	11,519.14	14.26
Medical and hospital	6,003.51	8,156.00	14,159.51	17.52
Office clerks and stationery	5,501.38	1,731.95	7,233.33	8.95
Water boys, messengers and Askaris	4,506.85	515.68	5,022.53	6.22
Recruiting and repatriation	-	46,382.61	46,382.61	57.40
Sundries and stores transport	2,575.81	19,297.69	21,873.50	27.07
Workshop	6,812.37	2,030.82	8,843.19	10.94
Fire Insurance	-	8,894.10	8,894.10	11.01
Vermin fighting	2,042.83	99.25	2,142.08	2.65
	233,387.27	173,777.08	407,164.35	503.91
STAFF SALARIES, ALLOWANCES AND CONTRIBUTIONS TO PROVIDENT FUND			37,497.33	46.41
Labour welfare			5,266.85	6.52
			449,928.51	556.84
ESTIMATED PROVISION FOR DEPRECIATION AND AMORTISATION				
Sisal areas		100,303.00		124.14
Buildings and machinery, etc.		85,683.00	185,986.00	106.04
			635,914.51	787.02
F.O.B. EXPENSES ETC.				
Transport, go-down expenses and F.O.B. Charges		30,262.50		37.45
Sisal cess		7,770.00	38,032.50	9.62
			673,947.01	834.09
Balance carried to profit and loss account			1,171,482.72	1,449.86
		Shs.	1,845,429.73	2,283.95

	Tons			Per Ton
SALES DURING THE PERIOD				
For export C.I.F.	588.84		2,171,606.72	3,687.94
Less: Freight		90,121.43		
Marine and war risks		12,107.80		
Brokerage		7,427.34		
Selling Commission		27,095.56		
Del credere		2,472.36		
Draft Discount		95.51	139,320.00	236.60
F.O.B. proceeds			2,032,286.72	3,451.34
Less: Export tax		73,475.50		124.78
Royalty paid to Tanganyika Government		557,704.00	631,179.50	947.12
			1,401,107.22	2,379.44
Add: Net proceeds of flume tow	21.16		27,650.51	11,306.73
	610.00		1,428,757.73	2,342.23
STOCKS AS AT 31st AUGUST 1951				
Estimated net F.O.B. Value less export tax and Royalty:				
Line fibre/tow	188.16	403,800.00		
Flume tow	9.84	7,872.00		
	198.00		416,672.00	2,104.40
Production	808.00		1,845,429.73	2,283.95
		Shs.	1,845,429.75	2,283.95

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (1) Accounts of Ralli Estates Limited for 8 months ending 31st August, 1951 - continued.

(m) ACCOUNTS OF RALLI ESTATES LIMITED FOR YEAR ENDING 31st AUGUST, 1952

RALLI ESTATES LIMITED

BALANCE SHEET 31st AUGUST 1952

1951 £		£ Authorised	£ Issued and fully paid	1951 £
	CAPITAL			
250,000	Ordinary shares of Shs.20.00 each	500,000	250,000	
	CAPITAL RESERVES			
	Difference between the directors valuation of the fixed assets as at 1st January, 1951 and the premiums paid therefore			
	Directors valuation per contra	380,210		
	Premium paid	336,473		
		53,737		
	Note: 1. In addition to the above premium of £326,473 the company has also paid to the Tanganyika Government in 1951 and 1952 £174,600 in royalties of the f.o.b. price of shipments			
	Development reserve	200,000		
75,000	General Reserve	100,000	353,737	
	REVENUE RESERVE AND SURPLUS			
-	Contingency reserve	40,000		
57,351	Profits unappropriated	72,095	112,095	
382,351			715,832	329,285
	CURRENT LIABILITIES AND PROVISIONS			-
50,372	Creditors and accrued charges	50,027		329,285
11,590	Unsecured loan from Ralli Brothers Ltd.	-		
2,537	Ralli Brothers Ltd. Current account	-		67,123
45,000	Provision for taxation	142,100		-
109,499			192,127	67,125
				54,022
				24,337
				9,247
				7,836
				162,565
	Note: 2. There is a contingent liability for approximately £4,000 in that the Custodian of Enemy Property has made a claim for Shs.78,755.00, which is not admitted, and legal proceedings are pending.			
	Note: 3. There are outstanding contracts for capital expenditure amounting to £26,000.			
491,850			£ 907,959	491,850

£	£	£	£
FIXED ASSETS	Directors' valuation 1st Jan.1951	Additions at cost	Accumulated depreciation	
Mjesani and Lanconi Estates acquired from the Tanganyika Government comprising the following assets at valuation attached thereto by the directors as at 1st Jan.1951, plus additions less estimated amortisation and depreciation from 1st Jan. 1951 to 31st Aug. 1952, leasehold land and transfer fees:				
Estates	15,473	199	-	15,672
Tanga	-	80	-	80
Buildings: Estates	115,172	7,142	25,755	96,559
Tanga	-	6,901	691	6,210
	130,645	14,322	26,446	118,521
Plant and machinery	86,308	6,980	15,113	78,175
Motor vehicles and implements	3,757	17,036	6,694	14,098
Furniture and fittings	3,740	1,108	592	4,256
	224,450	39,445	48,845	215,050
Sisal development	155,760	27,685	49,667	135,770
	380,210	67,128	98,512	348,826
Capital works-in-progress				24,403
				373,229
CURRENT ASSETS				
Ralli Brothers Limited: Current Account			360,345	
For Sisal afloat			45,300	
			405,645	
Unshipped sisal stocks at market value			52,886	
Stores and spares			53,040	
Debtors and payments in advance			13,341	
Balance at bankers and cash in hand			9,818	
				534,730
M.A. CARSON DIRECTOR				
G.C. PRIEST DIRECTOR				
				£ 907,959

REPORT OF THE AUDITORS TO THE MEMBERS

We have audited the above balance sheet. We have obtained all the information and explanations we have required. In our opinion such balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of our information and to the explanations given to us and shown by the books of the company.

MOMBASA,
11th March, 1953.

COOPER BROTHERS & CO.
CHARTERED ACCOUNTANTS.

RALLI ESTATES LIMITED

APPROPRIATION ACCOUNT 31st AUGUST, 1952

	£	£
Additional remuneration to directors for the eight months to 31st August 1951		2,100
Dividend of 8% less tax declared and paid for the eight months to 31st August 1951		15,000
		17,100
Transfers to capital reserves:		
Development reserve	200,000	
General reserve	25,000	
	225,000	
Transfers to revenue reserve:		
Contingency reserve	40,000	
		265,000
Profit unappropriated at 31st August 1952		72,095
		£ 354,195

	£
Profit unappropriated at 31st August 1951	57,351
Balance brought from profit and loss account	296,844
	£ 354,195

In the Court of Appeal for Eastern Africa

No.20

Agreed Correspondence and Documents. (m) Accounts of Ralli Estates Limited for year ending 31st August, 1952 - continued.

RALLI ESTATES LIMITED

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING 31st AUGUST, 1952

	£ Shs.Cts.	£ Shs.Cts.		£ Shs.Cts.	£ Shs.Cts.
HEAD OFFICE AND GENERAL EXPENSES			Gross profit from sisal productions and sales accounts:		
Staff and office accommodation etc.	3,875.00.00		Mjesani Estate	302,812. 6.09	
Travelling expenses	771. 6.70		Lanconi Estate	143,776.00.45	
Postages, cables, stationery telephone charges and sundries	1,081.15.60				446,588. 6.54
Sigi House maintenance	370.17.74				
	6,099.00.04		Sundry receipts		1,914.17.81
Land rents	2,890. 7.50				
Depreciation Tanga Office and go-down	690.12.00				
Leave pay and passages	1,210. 9.00				
Auditors fees and expenses	200.00.00				
Exchange and bank charges	2,198.00.07				
		13,288. 8.61			
Bonuses to staff		13,453.00.00			
Special grants to:					
Labour welfare fund	3,570.00.00				
Provident fund	3,400.00.00				
		6,970.00.00			
Directors fees		3,500.00.00			
Interest on loan		154. 2.94			
Preliminary expenses		51. 3.00			
		37,416.14.55			
Provision for:					
Amount under-provided at 31st August 1951 for depreciation and amortisation as follows:					

	Lanconi	Mjesani	
Sisal areas	3,970.19.48	7,355.16.63	11,326.16.11
Buildings and machinery	2,313. 3.68	3,000. 1.57	5,315.10.25
	6,286. 3.16	10,355.18.20	

Provisions for:		
Compulsory demolition of godown in Tanga	500.00.00	
Income tax	97,100.00.00	
Balance carried to appropriation account	296,844. 3.44	
	£ 448,503. 4.35	£ 448,503. 4.35

RALLI ESTATES LIMITED

MJESANI SISAL PRODUCTION AND SALES ACCOUNT FOR THE YEAR ENDING 31st AUGUST 1952

	Shs. Labour	Shs. Stores	Shs. Total	Shs. Per Ton
PRODUCTION EXPENSES				
Field work	277,904.66	59,237.97	337,142.65	122.85
Cleaning mature areas	124,971.46	-	124,971.46	45.53
FACTORY EXPENSES				
Power		52,794.72	52,794.72	19.23
Other costs of decorticating, drying, brushing and baling		188,894.00	80,456.31	98.15
Maintenance of buildings, plant and machinery	16,064.49	76,809.44	92,873.93	33.83
INDIRECT EXPENSES				
Maintenance houses, camps, roads and boundaries	99,421.44	271,818.20	371,239.64	135.24
Motor vehicles	5,185.29	20,071.86	23,257.15	9.20
Medical and hospital	30,720.96	20,034.31	50,735.27	18.49
Office clerks and stationery	11,908.28	5,238.95	17,147.23	6.25
Water boys, messengers and Askaris	24,569.10	1,405.66	23,974.76	9.46
Recruiting and repatriation	-	162,121.12	162,121.12	59.06
Sundries and stores transport	30,733.45	13,133.81	43,867.26	15.98
Workshop	7,204.53	4,941.17	12,145.70	4.42
Fire insurance	-	18,697.01	18,697.01	6.81
Vermin fighting	8,767.31	63.88	8,831.19	3.22
	826,344.97	786,824.41	1,613,169.38	587.68
Staff salaries, allowance and contribution to provident fund			98,361.50	35.83
Labour welfare			18,563.19	6.76
			1,730,094.07	630.27
DEPRECIATION AND AMORTISATION				
Sisal areas		391,674.57		142.69
Buildings and machinery		378,340.46		137.83
			770,015.03	280.52
			2,500,109.10	910.79
F.O.B. EXPENSES ETC.				
Transport, godown expenses and f.o.b. charges		121,265.55		44.17
Sisal cess		26,770.00		9.75
			148,035.55	53.92
			2,648,144.65	964.71
Balance carried to profit and loss account (£502,812.6.09)			6,056,246.09	2,206.28
		Shs.	8,704,390.74	3,170.99

	Tons	Shs.	Shs.	Shs. Per Ton
Sales during the period for export c.i.f.	2,518.00		10,512,396.34	4,174.89
Less: Freight		426,553.12	-	169.40
Marine and war risk		53,768.59		21.35
Brokerage		48,438.98		19.24
Selling commission		126,240.70		50.14
Del credere		12,225.87		4.85
Draft discount		272.51		.11
			667,499.77	265.09
F.O.B. proceeds			9,844,896.37	3,909.80
Less: Export tax		420,170.62		166.87
Royalty paid to Tanganyika Government		757,177.50		300.70
			1,177,348.12	476.57
			8,667,548.45	3,442.23
Add: Net proceeds of flume, tow, etc.	81.00		60,793.29	750.53
	2,599.00		8,728,341.74	3,358.34
Less: Stocks as at 31st Aug. 1951	313.50		663,773.00	2,117.30
	2,285.50		8,064,568.74	3,528.58
Add: Stock as at 31st Aug. 1952 as estimated net F.O.B. value				
line fibre and tow	449.50	632,900.00		1,408.00
Flume tow	10.00	6,922.00		692.20
	459.50		639,822.00	1,392.43
Productions	2,743.00		8,704,390.74	3,170.99
		Shs.	8,704,390.74	3,170.99

RALLI ESTATES LIMITED

LANCONI SISAL PRODUCTION AND SALES ACCOUNT FOR THE YEAR ENDING 31st AUGUST 1952

	Shs. Labour	Shs. Stores	Shs. Total	Shs. Per Ton
PRODUCTION EXPENSES				
Field work	200,003.39	85,262.99	285,286.38	183.35
Cleaning mature areas	50,688.93	-	50,688.93	32.58
FACTORY EXPENSES				
Power	-	32,891.04	32,891.04	21.14
Other costs of decorticating, drying, brushing and baling	102,920.23	23,389.49	146,309.72	94.03
Maintenance of buildings, plant and machinery	6,318.96	25,485.99	29,802.95	19.13
INDIRECT EXPENSES				
Maintenance houses, camps, roads and boundaries	43,775.51	49,652.91	93,428.42	60.03
Motor vehicles	2,390.30	16,278.86	18,669.16	11.99
Medical and hospital	9,880.16	13,552.29	25,432.45	15.05
Office clerks and stationery	8,487.20	3,787.45	12,274.65	7.88
Water boys, messengers and Askaris	6,596.96	532.68	7,129.64	4.58
Recruiting and repatriation	-	78,505.08	78,505.08	50.46
Sundries and stores transport	5,000.26	34,679.65	39,679.91	25.51
Workshop	8,750.62	7,149.06	15,899.68	10.22
Fire insurance	-	14,596.12	14,596.12	9.38
Vermin fighting	2,237.60	77.13	2,314.73	1.48
	447,050.12	403,858.74	850,908.86	546.85
Staff salaries, allowances and contribution to provident fund			62,557.75	40.21
Labour welfare			10,534.02	6.77
			924,000.63	593.88
DEPRECIATION AND AMORTISATION				
Sisal areas		296,277.58		
Buildings and machinery		222,535.85		
			518,811.43	333.42
			1,442,812.06	927.25
F.O.B. EXPENSES ETC.				
Transport, godown expenses and f.o.b. charges		74,064.91		
Sisal cess		15,110.00		
			89,174.91	57.31
			1,531,986.97	984.36
Balance carried to profit and loss account (£143,776.0.45)			2,875,520.45	1,848.02
		Shs.	4,407,507.42	2,832.58

	Tons	Shs.	Shs.	Shs. Per Ton
Sales during the period for export c.i.f.	1,403.00		5,808,183.44	4,125.13
Less: Freight		227,016.76		161.23
Marine and war risks		28,213.08		20.04
Brokerage		25,138.00		17.86
Selling commission		69,706.07		49.51
Del credere		6,123.99		4.34
Draft discount		283.00		.20
			356,480.90	253.18
F.O.B. proceeds			5,451,702.54	3,871.95
Less: Export tax		234,417.00		166.49
Royalty paid to Tanganyika Government		848,296.00		602.48
			1,082,713.00	768.97
			4,368,989.54	3,102.98
Add: Net proceeds of flume tow etc.	51.00		37,293.88	731.25
	1,459.00		4,406,285.42	3,020.07
Less: Stocks as at 31st August 1951	198.00		416,672.00	2,104.40
	1,261.00		3,989,611.42	3,163.85
Add: Stocks as at 31st August 1952 at estimated net f.o.b. value				
line fibre and tow	291.16	415,238.00		1,426.15
Flume tow etc.	3.84	2,658.00		692.14
	295.00		417,896.00	1,416.60
Production	1,556.00		4,407,507.42	2,832.58
		Shs.	4,407,507.42	2,832.58