

NORTH CHARTERLAND EXPLORATION COMPANY LAND DISPUTE
WITH THE COLONIAL OFFICE

THE ORIGINS, CONDUCT AND SETTLEMENT OF THE NORTH
CHARTERLAND EXPLORATION COMPANY LAND DISPUTE WITH
THE COLONIAL OFFICE: 1895 - 1941

BY

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TO MY PARENTS FOR THEIR
UNFAILING INSPIRATION,
LOVE AND GUIDANCE.

ABSTRACT

This dissertation deals with the origins, conduct and settlement of the dispute between the North Charterland Exploration Company and the Colonial Office.

In Chapter one the historical background pertaining to the formation of the North Charterland Exploration Company from its inception in 1895 has been examined. As a Commercial Company its aim was to make quick profits through mining. The failure in finding profitable amounts of minerals led to the alienation of land for sale to European settlers and the introduction of the reserve policy in North Eastern Rhodesia.

The disposal of land in the Concession was hampered by the terms of the Orders in Council of 1900 and 1911. Chapter two looks at the conflict between African land rights and the need of the Company to alienate land.

Chapter three deals with the negotiations that led to the signing of the Devonshire Agreement and the end of chartered rule in Northern Rhodesia. The proposals of the 1924 Land Commission are discussed together with the objections voiced by the North Charterland Exploration Company.

The final Chapter investigates the litigation between the North Charterland Exploration Company and the Colonial Office and the two public enquires which followed. The cost of litigation led to the loss of the Company's independence and its acquisition by Lonrho. The inadequacy of the existing reserves in the Concession resulted in the Northern Rhodesia Government buying the remainder of the Concession from Lonrho after arbitration in 1941.

In conclusion it is argued that the North Charterland Exploration Company brought unnecessary suffering on the people of North Eastern

Rhodesia through its existence and the consequent formation of reserves.
Secondly, the dissertation demonstrates the great sensitivity of the
Colonial Office to pressures exerted even by such an unsuccessful capitalist
enterprise as the North Charterland Exploration Company.

PREFACE

The presence of the British South Africa Company which had a mixture of commercial and political motives brought social and economic changes to the lives of the people of North Eastern Rhodesia. However, the presence of a second Company, the North Charterland Exploration Company in the area, made the situation for the African more complex.

This dissertation confines itself to the history of the North Charterland Exploration Company in the Eastern Province. This study is intended to make a contribution to history based on current literature on small speculative companies in Zambia, as hitherto little emphasis has been put on these Companies.

My research involved collecting data from published and unpublished materials in the University of Zambia Library, National Archives of Zambia and Zimbabwe. As there was a lack of material from any single source dealing with the Company, much time was spent consulting journals, unpublished materials, micro-films and Colonial Office records that were available. I would like to record my appreciation for the help given to me by these institutions.

Thanks are also due to Mr. V.P. Torul, Mr. Bob Sylvester and the many friends for their help and encouragement during the course of this work. Special thanks must go to Mr. D.M. Chetty for his assistance and generosity.

I am indebted to my supervisor Dr. H. Macmillan who volunteered to supervise my work at a time when I was facing many problems regarding my studies. I shall always be grateful to him. Sincere thanks also go to the many lecturers in the History Department of the University of Zambia who always inspired me by their concern and interest in my work.

CONTENTS.

	<u>Page</u>
Abstract	i
Preface	iii
Table of Contents	iv
List of Tables and Maps	v
Chapter One: The Origin and Development of the North Charterland Exploration Company, 1895-1910	1
Chapter Two: African Rights and Reserves 1911 - 1920	17
Chapter Three: Dispute with the Colonial Office 1921 - 1928	29
Chapter Four: Dispute and Settlement with the Colonial Office, 1929 - 1941	45
Appendix	60
Sources and Bibliography:	72

LIST OF TABLES AND MAPS

	<u>Page</u>
1. Table showing fluctuation in Land sales - North Charterland Concession	26
2. Map of the North Charterland Concession showing the proposed African reserves of 1914	26B
3. Map of the North Charterland Concession showing land assigned to Africans and Europeans after 1925	41B

CHAPTER I

THE ORIGINS AND DEVELOPMENT OF THE NORTH CHARTERLAND
EXPLORATION COMPANY, 1895 - 1910

Before the British South Africa Company (BSAC) gained control of North Eastern Rhodesia (NER), Carl Wiese, a German adventurer had already secured for himself a number of concessions from African chiefs in the area. Since 1885 he had been active south of Lake Nyasa and had gained influence with several African chiefs, one of whom was the Ngoni Paramount chief, Mpezeni. Wiese claimed that he gained concessions from chiefs amounting to some 25, 000 square miles on both sides of the Anglo-Portuguese boundary established by the convention of 1891.¹

Wiese's friendly relationship with Mpezeni brought him into contact with a number of Portuguese and British agents who sought his influence to gain a foothold in Mpezeni's country. Wiese chose the Portuguese resulting in Mpezeni's rejection of treaties with either Thomson or Sharpe. Sir Harry Johnston (His Majesty's Commissioner and Consul-General for the territories under British influence north of the Zambezi) was determined to prevent the Portuguese from establishing themselves in NER and sent Sharpe back to Mpezeni 'to buy Wiese and make a treaty with the chief'.² Sharpe returned to Nyasaland in May 1890 unsuccessfully. Johnston's failure to win Wiese's allegiance probably led him to label the man a slave trader and an "utterly unscrupulous" man.³

On 21 May 1891, Northern Rhodesia was proclaimed a territory within the British sphere of influence. There was a fear that unless some settlement was reached with Wiese, his claims would fall into the hands of foreigners (non-British). Wiese's claims in NER conflicted with those of the BSAC and Johnston rejected them. Wiese took the matter to the Foreign

Office and hoped that they would overrule Johnston's decision. Though the Foreign Office did not recognise the concessions they did not reject them either, but instead, wrote to Johnston suggesting that the BSAC come to some agreement with Wiese because they would only recognise concessions in British territory if granted to a "Chartered Company".⁴

At the beginning of 1894 Wiese sold his concessions for £1,500⁵ to the Mozambique Gold, Land and Concessions Company Limited, a body incorporated on 18 February 1893 by a London firm, Messrs. Berwick and Moreing, for the purpose of acquiring the Wiese concessions.⁶ The company was registered 'with a nominal capital of £1,000, only eleven pounds, three shillings of which was actually paid up'.⁷ It seemed that the intention of the Company was to resell their acquisition for a large profit. It registered the concessions at the Consular Court, Zomba, British Central Africa (now Malawi) on 2 March 1894.⁸ Control of the Company was soon acquired by the Oceana Company which held mining properties throughout South and Central Africa, 'most of which it gained control over by allocation of shares rather than payment of money'.⁹

The Chairman of the Oceana Company, Albert Lionel Ochs, was a rival of Cecil Rhodes (Chairman of the BSAC) and a prominent speculator of British nationality.

Ochs had attempted to gain a place on the British South Africa board, but achieved nothing beyond Rhode's contemptuous dismissal of him as "a low cad".¹⁰

According to Vail, Ochs had bought a substantial interest in the Mozambique Company towards the end of 1891 and he seems to have seen the acquisition of the Wiese concessions in NER as a means of putting pressure on the BSAC.

According to Galbraith Johnston stimulated the Oceana Company's

willingness to negotiate with the BSAC by threatening to reopen the issue of the validity of the concessions unless it came to terms.¹¹

Thus, to avoid any investigations, the two companies came to an agreement whereby the BSAC took over the Wiese concessions and granted the Mozambique, Gold, Land and Concession Company Limited an area of 10,000 square miles situated in the East Luangwa District. It was also agreed that a new company be formed, called the North Charterland Exploration Company (NCEC) to manage the grant. The BSAC acquired 30% shares while the 'Oceana promoters individually and the Oceana Company itself had substantial holdings in this new company'.¹²

After the amalgamation of North Western and North Eastern Rhodesia in 1911 the concession became part of the Eastern Province of the territory of Northern Rhodesia, 5,300 square miles being situated in the Petauke District, some 4,700 square miles in the Fort Jameson District, and a small tract of 25 square miles was situated in the Lundazi District.¹³ According to the conditions of the grant, the NCEC was formed with a capital of £1,000,000 made up of £1 shares.¹⁴ £300,000 of these shares were to be given to the BSAC for the grant and in commutation of its mineral rights. £400,000 shares were allocated to the Mozambique, Gold, Land and Concession Company Limited. £100,000 was to be subscribed as working capital and £200,000 shares were not issued but held in reserve.¹⁵ Another important condition was that the rights of Africans within the concession had to be respected. This meant that no African could be removed from land needed by the NCEC unless he willingly left, was financially compensated, or given adequate land within that area to grow his crops. The letter of 8 May 1895 provided that the names of the first directors of the new company were to be approved by the Chartered Company which would have a permanent right 'to nominate after allotment two

members of the Board provided the total number does not exceed five'.¹⁶ However, in August 1895 the BSAC nominated three directors namely: E. Davis, H.S. Hulse and C.C. Hyde. (Hulse and Davis resigned in May 1900 and January 1901 respectively on their own accord and were replaced by G.S. Fort and P. Inskipp).¹⁷ It is interesting to note that E. Davis, later Sir Edmund Davis, was to become a key figure in the development of the Northern Rhodesia copper industry as the promoter of the Northern Copper Company, and as a director of the Anglo-American Corporation and Rokana Corporation. The African World described him in 1933 as 'a very "Napolean" of finance'.¹⁸ The Mozambique, Gold, Land and Concession Company Limited had appointed A.J. Wallach and Colonel Gardener Warton.¹⁹ By January 1897 the Mozambique, Gold, Land and Concession Company Limited ceased to hold any shares in the NCEC and went into liquidation on 1 September 1903.

The history of the NCEC for the first few years was marked by continual friction with Mpezeni and the BSAC.²⁰ In August 1895, Colonel Warton was appointed by the NCEC as administrator and General Manager for the North Charterland Concession (NCC).²¹ On his arrival at the concession with a group of 14 "white men" and accompanied by Wiese in June 1896, he was received in a "friendly manner" by Mpezeni.²² When Mpezeni realized that Warton's intentions were to impose a tax on his people, use the concession for European settlement and interfere in his 'slave-raiding' activities, he showed strong resentment. This became apparent when Warton sought the BSAC's permission to raise a police force of 50 Europeans and 200 Africans.²³ According to Rau, Johnston did not want the NCEC to act as a local police force because he feared that they could provoke a war with the Ngoni before the BSAC or the Protectorate forces were prepared to fight

such a war.²⁴ Consequently the Foreign Office pointed out in a letter to the BSAC in 1897 that:-

Her Majesty's Government think that the North Charterland Company should be warned by your Board that in their position as a trading company they have no power of taxation or administrative.²⁵

Warton's activities aroused Ngoni suspicions and discontent.

Towards the end of 1897 Nsingo (son of Mpezeni), without the knowledge of his father, was said to have attempted to destroy the NCEC buildings at Fort Young.²⁶ Wiese, then an employee of the NCEC, sent word to Nyasaland that they were in danger of being attacked by the Ngoni and Fort Young was under siege.²⁷

On 29 December 1897 troops were sent to Fort Jameson to ward off the Ngoni from Fort Young. According to Rau, Wiese's actions were unnecessary because at that time of the year the Ngoni gathered annually at Mpezeni's kraal to celebrate their first fruits ceremony called Ncwala.²⁸ But to Wiese and Company it was clear that the Ngoni were preparing for war. Thus, in January 1898, Manning, the acting Commissioner, ordered the invasion of Mpezeni's country 'arguing that the time had now come to crush the Ngoni once and for all'.²⁹ Brake who led the British forces stated that the Ngoni were taken completely by surprise and easily defeated.³⁰ It was evident that the Ngoni were not prepared for war. The major effect of the war was the great loss of cattle to the Ngoni. At least half of the 20,000 to 24,000 head of cattle believed to be owned by the Ngoni prior to 1898, were taken by Brake's forces.³¹ Rau sees the defeat of the Ngoni as a profit making invasion and states that the Ngoni cattle were profitably sold in Southern Rhodesia and Nyasaland.³² The NCEC's Chairman, Frederick Young, condemned the 'harsh treatment of the natives and excesses in the

looting of cattle which apparently were acquired and disposed of in the personal interests of the British Central Administration Officers engaged in this mission'.³³ According to Hall, this loot of cattle enabled the BSAC to 'derive a considerable profit from the "rebellion" after covering all expenses'.³⁴

Despite their joint action in bringing about the defeat of the Ngoni, friction between the NCEC and the BSAC continued. Evidence of this was seen in a memorandum submitted by Codrington in 1901. He had this to say:-

they constitute in a certain sense an "imperium in imperio", as they desire to introduce their own mining and land laws regardless of those promulgated by our administration.³⁵

This state of affairs continued until 1902 when the NCEC got into financial difficulties.

The prime concern of the NCEC when it was granted the concession of 10,000 square miles was to make profits. The Company believed that through mining of precious metals it could achieve this goal. The NCEC was formed in the belief that Mpezeni's country was endowed with rich gold deposits.³⁶ The eagerness of the Company to strike it rich was demonstrated by the NCEC's offer of £15,000 to the first prospector to find "payable gold" in the concession.³⁷ No one ever claimed the reward. The first gold mine in NER during the colonial period was opened by the NCEC in 1901, at Sasare, north of Petauke.³⁸ Although the Company felt that the mine contained rich deposits, its distance from railhead and lack of other means of transport made it doubtful from the start whether the venture would be profitable. The promised railway line through NER never materialised, and, as early as 1898 the NCEC management complained of a

shortage of mine labour. The manager of the concession, Mr. J.H. Hayes, in an interview with Administrator Codrington in 1900, indicated that the Company was facing a serious shortage of men required for transport. He claimed that 12,000 loads of mining equipment had been awaiting transport at Tete since 1898 and blamed the BSAC for the labour shortage.³⁹ Hayes accused Codrington of encouraging labour migration to Southern Rhodesia. Here we find clear evidence of a clash of interest between the two companies. The NCEC wanted labour to promote its mining ventures while the BSAC was interested in supplying labour to the mines in Southern Rhodesia and Katanga.

With the NCEC in severe financial straits by 1902, the future of the Company was uncertain. When the management of the Company was taken over by the BSAC, a syndicate was formed in 1906 to work the Sasare Mine. By 1908 gold valued at £4,506 had been produced, but transport difficulties and the lack of adequate machinery and labour prevented any extensive development.⁴⁰ It was evident that the expectation of great mineral wealth was not well founded.

In 1902 the NCEC had approached the BSAC in the hope of obtaining financial aid. The BSAC agreed to advance the NCEC £5,000 on condition that the management of its affairs in Africa was entrusted to it, and by 1904 it had also taken on the secretarial work in London.⁴¹ From 1902 the "caretaking" of the concession by the BSAC was renewed every 12 months till 1910.⁴² The management of the concession was entrusted to Kinghorn, an official of the BSAC under the supervision of the Administrator. Until the liquidation of the original NCEC in 1910 the secretarial work of the Company continued to be carried out by the BSAC. Reports on the management of the concession were submitted to the NCEC directors, and important

questions were referred to them for decision.⁴³ It seems that the BSAC was able to establish through its nominees on the Board complete control over the affairs of the NCEC. By 1904 the entire staff on the concession had been recruited by Codrington. When the NER Administration realized that the concession could never be managed profitably with the high costs of mining and transport, it decided to encourage a policy of European settlement. This policy was stimulated by the flourishing state of the cattle industry stemming from the demand from Southern Rhodesia following the rinderpest epidemic of 1896. As a result the administration sold land to settlers at prices ranging from 6 pence to 1 shilling per acre, subject to the payment of quit rent.⁴⁴ By 1904 54,000 acres had been sold to 10 European settlers,⁴⁵ and there were numerous applications from Europeans for land in ^{the} concession. The administration pointed out that this was so because over 1,000 head of cattle had been given out by the BSAC to settlers on the concession with the result that there was then a small but thriving community of farmers in the neighbourhood of Fort Jameson, and land, formerly of no value, was becoming saleable.⁴⁶

In the early stages it looked to be to the mutual advantage of farmer and native that no movement of population should follow on the land having been bought as a farm'.⁴⁷ However, when Europeans began to improve their stock they wanted the Africans off their farms claiming that they did not want their 'pedigree cows' mixing with African cattle.⁴⁸ 'Some Europeans therefore began to demand territorial segregation.'⁴⁹ Africans complained that European owned cattle ate their crops. The NCEC was anxious to promote European settlement in the concession, but the disposal of land in the concession was hampered by the fact that it was bound to recognise "the possessory rights" of the inhabitants. These were defined by the NER Order

in Council of 1900 as follows:

The company shall from time to time assign to the natives inhabiting North Eastern Rhodesia land sufficient for their occupation, whether as tribes or portions of tribes, including in all cases a fair and equitable proportion of springs or permanent water. No native shall be removed from any kraal or from any land assigned to them for occupation except after full inquiry by order of the administrator approved by the (High) Commissioner. **50**

The first move towards the creation of reserves came with the appointment by the administrator in 1904 of the East Luangwa Commission which comprised of L.H. Beaufort, a judge of the High Court, C.P. Chesnaye, the local magistrate and civil commissioner, and L.A. Wallace, the chief surveyor, who subsequently became administrator of Northern Rhodesia.

The 1904 Commission strongly believed that the maintenance of good relations between the cattle farmers and the African population depended on the number of cattle the farmer kept and his attitude towards the African.⁵¹ Therefore, they felt that it was necessary to establish a reserve system because sooner or later friction between the two groups would be bound to surface. As the farmer's cattle increased he would require more land and, as the African population increased, their land requirements would also increase. The Commission believed:-

It is imperative that land within a certain radius of Fort Jameson should be mainly in the occupation of Europeans and that the natives, especially the Ngoni, would be better off and more happy and prosperous if removed to ground permanently reserved for them. **52**

The Commission proposed only one reserve of 490 square miles because they claimed that the site of other reserves 'would depend on the situation of the land that might be asked for European occupation'.⁵³ The Reserves Commission also suggested that compensation of 3 shillings per

hut should be paid to Africans who chose to leave land sold to European farmers. Those who preferred to remain, should be allowed to stay on the farms as tenants. This policy did not work as the majority of the Africans stayed on the European farms and according to the Order in Council of 1900, no African could be removed without his consent.

In 1905, Wallace submitted a memorandum in which he agreed that the position with regard to land in NER was far from satisfactory. He proposed that the whole territory be surveyed in order to work out African reserves. But H. Wilson Fox (financial director of the BSAC) disagreed with Wallace and argued that in view of the attitude of the Colonial Office in connection with a similar question in the Bechuanaland Protectorate, 'a claim by the Company to be recognised as the absolute owner of all land lying outside the reserves, irrespective of settlement, would not be accepted'.⁵⁴ Fox, in any case, felt that the formation of reserves would be premature and expensive. According to Gann, Fox also objected to the creation of reserves on principle believing that:-

such a policy would lead to the isolation of the country's labour resources, which should be made available by taxation, education and the progressive destruction of communal ownership...⁵⁵

Formally the North Charterland Concession was granted by the BSAC in 1906. The grant was signed by the then administrator of NER, Codrington. The reason for the formal grant being made only in 1906 was because it was not until then that the ordinance requiring registration of land grants came into existence.⁵⁶ The title granted in 1906 (contrary to the terms of the original grant) reserved the mineral rights to the BSAC.⁵⁷

The spread of sleeping sickness and the uncertainty of its "vector" brought an end to the European cattle industry in NER. In 1908 Dr. R.S. Montgomery suggested that in addition to tsetse flies the blood sucking fly,

"stomoxys calcitrans", might also carry cattle trypanosomiasis. Louis Botha, Prime Minister of the Transvaal, feared that this fly might spread cattle trypanosomiasis throughout Southern Africa.⁵⁸ He urged a complete boycott of cattle from north of the Zambezi as a way to stop the possible spread of the disease. This meant that the main market for NER cattle, Southern Rhodesia, was cut off and the cattle industry was killed. The closure of this flourishing market had an adverse effect on the income of the NCEC because the survival of the Company depended on its land and cattle sales and the sale of cattle by farmers on the concession to Southern Rhodesia. This was no longer possible and income was lost to the NCEC because the farmers could not pay back their loans for cattle nor the price of the land they bought. The Company was badly affected by this turn of events and once more fell into financial difficulties. In March 1909 P. Inskipp resigned and was not replaced by the BSAC.⁵⁹ This meant that after 1909 the BSAC had only two directors on the NCEC Board.

In 1910 the Company was reconstructed as the NCEC (1910) Limited with a capital of £500,000 made up of 10 shilling shares of which 388,712 were issued as fully paid.⁶⁰ 150,000 of these shares were held by the BSAC and the Company purchased a further 50,000 shares at 6 shillings and 3½ pence each. A total of £73,386 was subscribed as new working capital, and £205,640 and 10 shillings was held as unissued reserve capital.⁶¹ The BSAC had substantial holdings in the new Company and thus still held an effective controlling interest. Out of the new working capital about £16,000 was paid to the BSAC in respect of the amount they had spent on the NCEC and some £4,000 was spent on the reconstruction of the Company.⁶² The new Company appointed its own manager. He was Mr. Mckerrow who took over the management of the company's affairs in Northern Rhodesia in January 1911 and from thereon the NCEC

managed its own affairs. However, on the promotion of the new Company, it was stated that the first Chairman should be chosen by the BSAC and all the initial directors of the new company approved by him.⁶³ Sir H. Wilson was the new Chairman and the directors were F.H. Hamilton, G.H. Hargreaves and G.S. Fort. Sir H. Wilson and G.S. Fort were nominees of the BSAC.

'but so far as it was known neither Mr. Hargreaves nor Mr. Hamilton were selected by or in any way connected with the British South Africa Company.⁶⁴

Conclusion

The disposal of concession land by the NCEC brought about a conflict over land rights between the Company, the settlers and the African population. This conflict led to the issue of the creation of reserves within the concession. The land rights and reserves issue were to continue under both the BSAC's and the Colonial Office's administration of Northern Rhodesia, and will form the central theme of this dissertation.

FOOTNOTES

In the footnotes the following abbreviations occur: NCEC for North Charterland Exploration Company; BSAC for The British South Africa Company; NAZ for the National Archives of Zambia; NA/ZIM for the National Archives of Zimbabwe; and CO for Colonial Office.

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CHAPTER 2.

AFRICAN RIGHTS AND RESERVES, 1911 - 1920

This period was characterised by much discussion between the BSAC and the NCEC regarding African land rights and reserves. Questions arose as to what were the rights of the Africans living on the concession and the terms under which Africans could be removed from farms required for European settlement. With the ending of Ngoni power under British rule, people had tended to scatter over the country and it became difficult for the NCEC, especially in the neighbourhood of Fort Jameson, to find farms for Europeans.

These problems arose after 1910 as a considerable change took place in the economic outlook of the East Luangwa District, as Europeans turned their attention from cattle farming to the cultivation of cotton and after 1912 of tobacco. Even before the reconstruction of the NCEC the growing of cotton and tobacco within the concession had been encouraged by the BSAC. In 1910 the Acting Administrator of NER, L.P. Beaufort, informed the NCEC that he was promoting the growing of cotton in the concession as the climatic conditions there were similar to those of the "Nyasaland uplands" where cotton cultivation was a success.¹ But, the climatic conditions might have been favourable for cotton cultivation but:-

transport still continues to be our great difficulty and we have 102 tons of last season's cotton still waiting to be despatched to Tete or Blantyre.²

He argued that unless something was done to improve labour conditions cotton would never become the staple industry of the country. Cotton never did become the staple crop of the Eastern Province but by 1912 tobacco farming was proving a success. The high tobacco prices on the world market and a ready

market in South Africa resulted in a flow of settlers to land around Fort Jameson. These settlers, unlike their predecessors, the cattle farmers, put large acreages under cultivation and hence demands were made for more land and labour.

The settlers were willing to allow the Africans to remain on their farms as tenants on condition that they worked for them for two months in the year at the current wage, and that the location of gardens was subjected to their control. Mckerrow wrote that the settlers'

great complaint is that natives so resident do not confine their cultivation to one area in the vicinity of their huts, but pick and choose such areas as they want for their own cultivation.³

It seemed that Mckerrow and the settlers were trying to introduce labour tenancy in NER as in Nyasaland, where it was called "thangata". The NER administration took the view that the land could only be freed from the rights of the Africans living upon it by the payment of compensation as a result of which the Africans would agree to move to other land or remain as tenants. In 1912 settlers in the concession had to pay an average of £1 per hut compensation whether the African hut owner left or remained as a tenant.⁴

The Charterland Company claimed that these policies not only caused applicants to withdraw but also induced old settlers to leave.⁵ Mckerrow strongly objected to compensation being paid to the African when he wrote,

It would now appear the native is the owner of all our concession and we have still to buy the land back from him ...⁶

In reply administrator Wallace said that 'until the native rights had been purchased or otherwise dealt with', the NCEC could not grant land free of African rights.⁷ Mckerrow's attitude towards the policy of the administration

was one of strong disapproval. This was evident when he granted Page land refused by Judge Beaufort. It was said that Page was charging the Africans on his farm rent.⁸ In a further case, the owners of 200 huts were evicted from Haselton's farm without compensation being paid.⁹ According to Jokonya, farmers in the concession continued to "interfere with native villages and gardens..." and in some cases used forced labour.¹⁰ These actions by Mckerrow regarding African rights certainly annoyed Wallace, who, in a telegram, asked the magistrate at Fort Jameson, H.C. Marshall, to

warn Mckerrow that he only holds his land subject to native rights and that no transfers or titles given by him will be recognised unless arrangements made with natives occupying land have been approved by (the) administrator. If we are forced to take action to prevent him from forcing natives off their land he will increase his difficulties to such an extent as to render his title which is subject to native rights of doubtful value to his company.¹¹

Mckerrow regretted the demarcation of one large African reserve in the concession in 1904. He claimed that it was a failure as many villages refused to be moved into it, and the BSAC administration refused to permit the granting of farms by the NCEC in areas where Africans were fairly numerous. He argued that this policy prevented the company from selling land. It seems that Mckerrow tried to circumvent this policy and imposed such conditions as to force Africans off their land to make room for the expected settlers. Evidence of this was clear when Wallace warned that if Mckerrow continued to force Africans off their land,

I shall be forced to take action in the High Court. Such action might seriously injure the position of the NCEC as regards their power to alienate or even use their land.¹²

This telegram led to a meeting between Marshall and Mckerrow. Marshall pointed out that the BSAC never had surface rights to the concession they granted the NCEC.¹³ Therefore, to get undisputed rights to the land the NCEC had to buy out the African rights. He argued that this could only be done by grouping the people under their own recognised hereditary chiefs and finally moving them into reserves.¹⁴ Thus, the NCEC came to the conclusion in 1912 that it was essential to have African reserves set aside within the concession so as to free the land for European settlement.¹⁵

At discussions held in 1913 the chiefs concerned approved in principle the formation of reserves permanently assigned to them. In the words reported to have been uttered by Mpezeni, 'it is good that we should have our own land where the white man cannot come'.¹⁶ A general scheme was then drawn up providing for six reserves in the Fort Jameson district; four in Lundazi, and nine in Petauke. Seven of these, the four Lundazi reserves, two in Fort Jameson, and one in Petauke, were outside the concession area. In January 1914 the NCEC was notified of the proposed reserves within the concession which amounted to 1,936 square miles.¹⁷ It was further pointed out that on the official establishment of the reserves, no compensation would have to be paid to the African. Mckerrow was informed of the proposed reserves in February 1914 by his directors and was also told that,

It is certainly to our advantage to get these reserves accepted as quickly as possible, and my Board trust that you will co-operate with the British South Africa Company in trying to avoid as much as possible raising any native questions in respect of land until the High Commissioner's approval has been obtained.¹⁸

It is important to note that no question was raised of compensation for land lost by the NCEC when they accepted the 1913 reserves. Their immediate

concern was to get the reserves approved. Wallace wrote to the High Commissioner in January 1915 trying to impress upon him the need for reserves in the East Luangwa District. Wallace wrote that as far back as 1904 the policy of the NER administration was to create larger groups of villages which would form the nuclei of African reserves. But where European settlement was taking place, as in the North Charterland Concession, it was necessary to define reserves as soon as possible because in some cases the NCEC had granted farms in areas where the African population reached 140 to a square mile.¹⁹

Aware of the views of Mckerrow regarding African rights Wallace recommended that, to avoid the problem or conflict arising after the proclamation of reserves, the BSAC Board should issue a Private Native Locations Proclamation defining African rights which would state that; 'where land has been alienated subject to native rights villages may not be removed or rent charged without the permission of the administrator'.²⁰ Wallace argued that for the development of the East Luangwa District it was necessary to give all help to the NCEC to enable them to settle European farmers on the concession, but he also wanted the BSAC to have control over the NCEC's disposal of land, and therefore proposed the Private Native Locations Proclamation which was accepted by the Chartered Board.²¹ He claimed that the establishment of reserves would show that the BSAC was abiding by the terms of the Northern Rhodesia Order in Council of 1911 which stated that all African rights had to be respected and, on the other hand, Wallace repeated that the reserves were necessary to enable the NCEC to sell land free of African rights and in so doing promote the policy of European settlement on the concession.

The Private Native Location Ordinance was not in fact issued as the

whole question of reserves was left in abeyance until after the end of the First World War. The Colonial Office felt that Northern Rhodesia should await the outcome of the deliberations of ^{the} Southern Rhodesia Native Reserves Commission of 1914-1915²² and, since NER was a major source of porters for the East African campaign, they feared that any attempt to move the population into reserves at such a time would disrupt the labour supply.

In addition to the conflict between the two companies over land policy, there were also difficulties over the supply of labour for which the NCEC blamed the BSAC. In Southern Rhodesia the Chartered Company had a direct interest in the mining industry as a shareholder and royalty owner and, as the governing body in the territory, it taxed mining profits. Therefore the BSAC was anxious to see that the Southern Rhodesian mines obtained a continual flow of African labour. The introduction of taxes in NER was intended to stimulate the flow of labour to the mines. From as early as 1906 the Rhodesia Native Labour Bureau was active in the recruitment of labour in NER. But in 1916 there was an additional heavy demand on the Eastern Province's labour market for war purposes resulting in a shortage of local labour for agricultural purposes.²³ Between 1916 and the end of the war some 20,000 men were recruited as porters from the province including 12,000 who came from Fort Jameson district.²⁴ In 1917 the Fort Jameson farmers and the NCEC complained about the shortage of labour and even tried to have the activities of the Rhodesia Native Labour Bureau in the area curtailed. Henderson pointed out that the Eastern Province was one of the largest suppliers of labourers to the Bureau.

The NCEC was itself engaged in farming on a large scale. J.L. Bruce, who became the manager of the NCEC in 1916 was also the chairman of the Fort Jameson Farmers Association (formed in 1904). The interest of the NCEC was to develop its own land to make it profitable. It had some 9 estates under

tobacco and claimed it would open more if it was certain of securing labour for them. By 1920 the men had returned from military duty and hope for the recovery of agriculture was at last in sight. But increased taxes were imposed which resulted once again in the bulk of adults leaving the province to seek work in Southern Rhodesia. Another important reason for the labour shortage, besides the unattractive wages paid by the local farmers, was the fact that the farmer's planting season coincided with the busiest time of the agricultural cycle. Those who were available preferred transport work or working on the mines due to higher wages. The BSAC labour policy certainly affected the NCEC since the labour shortages deterred prospective European farmers from coming into the area to take up farms.

Prior to 1917 the United Tobacco Company had a three year contract with the 14 tobacco farmers in the East Luangwa District and the scheme turned out to be very profitable for the company.²⁵ Since the NCEC's land sales were bringing little income as shown in the table, it tried to generate income from 1917 to 1920 by the purchase of tobacco produced in the district.²⁶ It was able to do this by overbidding the price offered by the United Tobacco Company to the farmers.²⁷ During 1920 the Company purchased from the settlers approximately 439,800 lb. of Virginia tobacco, besides its own crop which amounted to 162,000 lb.²⁸ This strategy was evidently unsuccessful as, owing to the severe depression in the tobacco markets, in the latter year. 'It had not been possible to sell (flue) tobacco for forward delivery, as had been the case with the 1918 and 1919 crops.'²⁹

At the end of the war a number of new European settlers arrived on the Concession. Besides the labour problem, the Chairman of the NCEC reported that the Company faced a new problem as a result of the influx of refugees following the 1917-18 uprising in Portuguese East Africa.³⁰ These

people claimed the same rights as the Concession inhabitants. The Company felt that these people were aliens and therefore had no rights within the Concession. In 1918 the administrator agreed that these people had no land rights but nothing was done to move them out of the area as they were found to be a useful addition to the population, paying tax and adding significantly to the labour supply for the Southern Rhodesian mines.³¹ But to the NCEC they were an obstacle to their disposal of land to Europeans and an additional argument for the extension of reserves within the Concession.

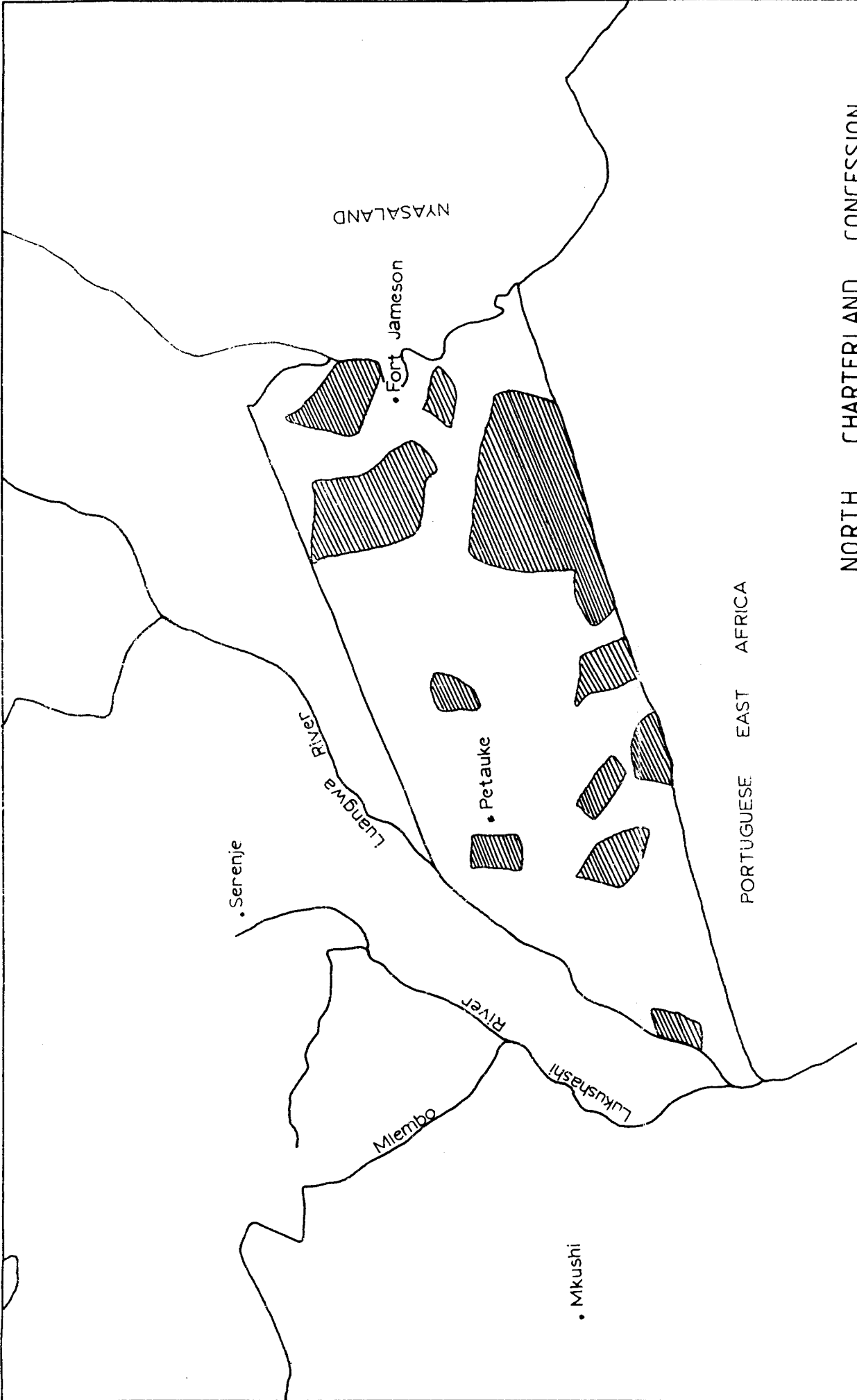
The NCEC claimed that it keenly supported the settlers on the Concession and spent a large amount of money in growing cotton and tobacco, building a ginnery and tobacco warehouse, improving roads, providing waggons and establishing a number of trading stores, stocking agricultural implements as well as other goods for both the European and African traders. It also ran a motor transport service for passengers and goods between Fort Jameson and the railhead at Limbe in Nyasaland.³² The Company stated that without its efforts and those of the settlers the Concession would have remained in its "pristine condition".³³ To continue with this development the Company continued to press for a reserve settlement. But the matter was complicated by the reluctance of Africans to move into land reserved for them, and the unresolved question of who owned the land. Between 1921 and 1924 little was done to help the NCEC despite its insistence that it needed land free of African rights for the flood of settlers it expected to arrive in the immediate future.³⁴ As tobacco became an increasingly successful settler crop in the 1920's as many as 80 settler families were settled as tobacco growers in the Concession area.

By the end of this period, the NCEC was still in a dilemma regarding the provision of reserves in its Concession. The reserves were as yet not

sanctioned by the High Commissioner. Most of the people who were expected to move into the reserves were still on European farms and or on unalienated parts of the Concession. To make things worse the BSAC was preoccupied with the administration of Southern Rhodesia where the settlers challenged the Company's claim to the commercial ownership of the land.

TABLE SHOWING FLUCTUATIONS IN LAND SALES - N.C.E.C.
1895 - 1940.³⁵

YEAR	LAND SOLD IN ACRES	GROSS REVENUE	NO. OF FARMS
Prior to 1914	91,374	£2,456	24
1914 - 1919	73,071	£4,195	25
1920 - 1924	9,418	£1,209	8
1925	12,892	£3,450	7
1926	8,040	£3,618	7
1927	1,481	£644	1
1928	1,056	£581	1
1929	3,077	£1,972	2
1930	972	£729	1
1931	5,593	£1,640	3
1932	-	-	-
1933	1,062	£321	1
1934	1,119	£855	1
1935	-	-	-
1936	1,056	£535	1
1937	-	-	-
1938	1,036	£625	1
1939	1,000	£198	1
1940	3,849	£1,149	3



Scale 1:100,000

PORTUGUESE EAST AFRICA

NORTH CHARTERED CONCESSION

NYASALAND

Luangwa River

Miembo River

Lukushashi River

• Serenje

• Fort Jameson

• Petauke

• Mkushi

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36. NAZ/BS3/487, Map showing 1914 proposed Native Reserves, 10 September 1921.

CHAPTER III

DISPUTE WITH THE COLONIAL OFFICE, 1921 - 1928

The debate during this period revolved around the problem of who owned the land in Northern Rhodesia. It is probable that by 1920 the BSAC had made up its mind to give up its Charter. It seemed that due to the loss of its "assumed ownership" of the unalienated land of Southern Rhodesia, the Company wanted to come to some agreement with the Crown regarding their respective rights and liabilities in regard to land, minerals and the deficits accumulated through the administration of Northern Rhodesia.

In NER the company had no land concessions though it acquired three freehold areas from the African Lakes Corporation. The Company was entrusted with the administration of NER by the NER Order in Council of 1900 and was empowered to deal with land for Africans. In NER as in Southern Rhodesia, the Company was the administering agent for the Crown. Therefore, the BSAC was entitled to be reimbursed by the Crown for all excess of administrative expenditure while the crown was entitled to all net receipts from land not required by the company.¹

After amalgamation the power of legislation was vested not in the BSAC but the High Commissioner for South Africa. But the mineral rights were vested in the Company as was the power of dealing with waste lands. Thus, the Order of 1911 did not change the rights of the Company with regard to land. The Order also placed the general administration of the whole territory in the hands of the Company thus making it an agent of the Crown and therefore entitling the Company to be reimbursed by the Crown for all deficits on administration accumulated since the date of the Order in Council.

The Colonial Office, acting on behalf of the Crown, was concerned about the issues raised by the BSAC regarding finance because, if the claim was to extend back to the commencement of the company's operation in Northern Rhodesia it would involve a sum of about £1,000,000 up to 1921 and a further administrative deficit of £160,000 for 1921.² Thus, the Secretary of State for the Colonies, Lord Milner, recommended that the case should be referred to the Treasury Solicitor. But in 1921 the British Government appointed a committee under the chairmanship of Lord Buxton, the former Governor-General of South Africa, to investigate whether the BSAC's claims to land, minerals and compensation for administrative deficits in Northern Rhodesia should be referred to the Privy Council for settlement or should be settled by agreement between the Crown and the Company. The Buxton Committee recommended that the issue should be referred to the Privy Council. In the same year the Colonial Office submitted the problem to the Law Officers. The Colonial Office feared that if it did claim the land in Southern Rhodesia as proposed by the 1918 Privy Council decision then it would have to incur financial responsibility for administrative deficits in Northern Rhodesia also. There was also the danger that if the government took the Company to court over Northern Rhodesia it would face a petition of right from the Company claiming payment for the Southern Rhodesian deficits as proposed in the Cave award.³

In March 1922 the BSAC did lodge a petition of right making certain claims against the Crown in respect of Southern Rhodesia.⁴ It was under these circumstances that negotiations opened between the two parties for a settlement. During the negotiations the Crown questioned the right of the BSAC to grant such a large tract of land to the NCEC in an area where the BSAC only held the mineral rights. The Crown pointed out that the area of

10,000 square miles 'seemed to be hardly an ordinary administrative grant which we were obliged to accept without question'.⁵ Eventually, in 1923 an agreement was signed between the Crown and the Company known as the "Devonshire Agreement". Under this agreement the Crown paid £3,750,000 in quittance of the amount due to the company in Southern Rhodesia under the Cave award.⁶ The Crown dropped its long - standing claim against the BSAC for wartime expenditure for the defence of Southern Rhodesia, and agreed to take over the administration of Northern Rhodesia.⁷ In return the BSAC withdrew its petition of right, dropped its claim against the Crown for administrative deficits in Northern Rhodesia in return for half of the revenue from certain future land sales. The company was also granted the sole ownership of all the minerals in the country which the Colonial Office did not think were of great value at that time.⁸ Of greatest relevance to the affairs of the NCEC was clause 3(E) which stated:-

As regards the concession granted by the Company to the North Charterland Exploration Company note has been taken of the fact that this is subject to native rights and it should be further understood that the crown retains power to set apart such native reserves in the area granted to that Company as it may think proper for that purpose.⁹

It could be argued that this agreement was a compromise that ideally suited both parties. If the crown had refused to recognise the grant made to the NCEC, the BSAC would have had to compensate that company. As for the Crown, it avoided an expensive court case and reimbursement for Northern Rhodesian deficits.

Financially, the NCEC was always unsound and in 1921 the Company made a loss of £6,078 and 'regretted that no profit was available for the payment of a dividend on the preference shares'.¹⁰ In 1923 there was a loss of £30,181

which was partly due to 'provision of reserve for bad and doubtful debts, the writing off agriculture expenditure and full allowance for depreciation.'¹¹ In 1925 the Company showed a loss of £3,612 which, added to the previous debit balance of profit and loss, accounted for a total loss to the Company of £52,404.¹² In November 1925 the BSAC sold all its shares in the NCEC and was no longer represented on the Board. On 1 January 1926 the NCEC appointed the London and Rhodesia Land and Mining Company Limited as its secretaries in succession to the BSAC. In December 1926 the capital of the Company was reorganised. The issued capital at 31 December 1925 was £344,401 and 10 shillings divided into 588,803 ordinary and 100,000 7% preference shares both of 10 shillings. The new capital would be distributed as follows:

To Ordinary Shareholders	<u>Shares</u>	<u>£</u>
1 new 5/- share for each old 10/- share	588,404	147,201
To Preference Shareholders		
2 new 5/- shares for each 1 old 10/- share	200,000	50,000
Bonus of 2 new shares for 1 old 10/- share	200,000	50,000
Total issued to existing shareholders	988,804	247,201
Issued for cash at par	164,800	41,200
Bonus to subscribers (1 in 1)	164,800	41,200
Total capital issued	1,318,404	329,601

The effect of the scheme was to allow £56,000 and 15 shillings (224,003 5-shilling shares) of the old capital to be cancelled and used to wipe out on paper the losses sustained to date, while £41,200 in new working capital was raised.¹³

It appears that Sir Abe Bailey, a prominent South African mining financier and millionaire capitalist, who controlled the London and Rhodesia Land and Mining Company Limited, as well as many other companies, had

become a substantial shareholder in the NCEC following the withdrawal of the BSAC, and was the major source of new capital. Tobacco in NER was at this stage experiencing a minor boom and Bailey was also involved in the Rhodesia Tobacco industry. With his assistance the NCEC took shares in the Dominion Tobacco Company Limited who had a factory in London,¹⁴ hoping that profits would be boosted by the 'actual marketing of the manufactured article'.¹⁵

Meanwhile the end of BSAC administration in Northern Rhodesia in 1924, coinciding with an upsurge in tobacco prices, had reopened the whole question of reserves. Regarding reserves in Nyasaland, a local land commission in 1920 had firmly stated:

We believe that the experience of other countries tend to show that reserves became centres of bad behaviour and sloth, and in our opinion their establishment in this Protectorate would be a complete disruption of the normal conditions of native life for which we see no existing justification.¹⁶

In 1921 the Buxton Committee suggested that the delimitation of reserves in Northern Rhodesia should be dealt with after matters with the BSAC were settled. The Committee took this decision due to the continuing uncertainty regarding the ownership of unalienated lands in Northern Rhodesia. The Crown accepted the Buxton report regarding the delimitation of reserves.

Considerable attention was focussed on the provision of land for the Africans of the territory by the Northern Rhodesia Missionary Conference that was held in 1922. The Anglican Bishop of Northern Rhodesia, Alston May, wrote on behalf of the Northern Rhodesia Missionary Conference that:

since large portions of the country have already been alienated and ceded to European owners it is of opinion that almost all the balance will be needed to meet the requirements of the native population.¹⁷

The Universities Mission to Central Africa showed their feelings towards the

NCEC and the BSAC when they held out that:-

Elsewhere if the natives have stood in their way, the BSAC have had to dispossess them in their own name *and at their own risk; but here they can always shelter themselves behind the North Charterland.*¹⁸

The various Christian Missions in Northern Rhodesia felt strongly about the land situation for Africans in the country. This kind of attention certainly disturbed the management of the North Charterland Concession. J.L. Bruce, commenting on a request from the General Missionary Conference of Northern Rhodesia for information on African reserves in the concession, remarked:-

I am afraid these people are going to be troublesome. Their intention is obvious viz., to endeavour to obtain for the natives as much land as possible quite irrespective of their requirements, and if they can bring pressure on the imperial authorities we may be sacrificed.¹⁹

He also pointed out that the Bishop of Northern Rhodesia in a letter to the administrator regarding reserves, referred to the company's concession as an 'extraordinary claim... to ten thousand square miles of territory'. J.L. Bruce's final words were, 'It is a very great pity, that the Reserves are still unsettled'.²⁰

By 1923 in the Colonial Office there was a strong feeling against reserves in Northern Rhodesia. Strachey (Secretary to the Secretary of State for the Colonies) pointed out that the creation of African reserves in Nyasaland was rejected and instead limited areas for European settlement were adopted, and felt that this policy should be applied in Northern Rhodesia too.²¹ When the Colonial Office took over the administration of Northern Rhodesia in 1924, the first governor was Sir Herbert Stanley.

Stanley believed European farmers should be welcomed, as they provided employment and taught better methods to Africans and he felt that "the present uncertainty (about

native reserves) cannot but produce a feeling of insecurity among the natives and have an unsettling effect on their minds."²²

Thus, the Northern Rhodesia administration came to the conclusion that provisional reserves should be created and Stanley first set up a three-man commission consisting of a local farmer, J.N. Phipps, the District Commissioner of Petauke, E.H. Lane Poole, and Justice Macdonnell of the High Court in Livingstone in 1924, to look into reserves for the African population in the East Luangwa District 'where the problem of overcrowding was most serious'.²³

On arrival in Fort Jameson the Commission sought the views of the people regarding the establishment of reserves in the district. The North Charterland Company complained of the shortage of labour and claimed that this hindered the company from selling unoccupied land and expanding its own estates which were under tobacco. Therefore, Bruce argued 'that the land allotted to the Africans should be so little that they would have to enter the local labour market to survive'. He testified:

It would be politic to procure Reserves on the basis of the bare subsistence of the Native, giving an allowance for that only, assuming that the policy of the country is to encourage European Development. I shall not go so far as to say that the Natives in the whole of the Territory should be cut down to a bare subsistence allowance, but I do say so as regards the concession.²⁴

The commission was influenced by the desire to retain the areas previously proposed as reserves by the BSAC administration in Northern Rhodesia but at the same time it was at liberty to extend or curtail these areas as circumstances demanded in each particular case. When it came to the size of reserves, there arose a problem since some favoured numerous small reserves while others preferred large ones. It seemed the settlers favoured the former because they believed that a number of small reserves scattered over the

country would give a ready supply of labour to the local farms. J.L. Bruce supported the settlers because he claimed that the Europeans and Africans depended on each other; Europeans for labour, Africans for a market for their produce, and scattered reserves provided for this.²⁵ He also felt that with small reserves it would be easy to control any African uprisings. But officials of the administration opposed this policy and claimed that large reserves were necessary to allow for the incorporation of tribes and to permit them to develop "along their own lines" and in accordance with their own laws and customs, while small reserves would divide the tribe. The officials stated that large reserves would be easier to administer. The commission also sought the opinion of ^{the} local army commander regarding the defence of Fort Jameson and its surroundings. He felt that with modern transport, and the improved system of roads that existed in 1924, large reserves were preferable.²⁶

The commission's main guiding principle was to make such proposals as would involve the "minimum movement" of the African population, and so, large reserves were recommended. A general assumption was that one-third of the concession was uncultivable, largely owing to lack of water. It was considered that to produce adequate food for an adult for one year, $1\frac{1}{4}$ acre of land was required although this was said to be the area normally cultivated by a family of two or three persons. Some 17,000 head of cattle were estimated to be in the area, and 8 acres per head was taken as providing the necessary pasture.²⁷ The commission had further to take into consideration the natural increase of population and added 50% to the land requirements existing at the time of their enquiry on the assumption that the remaining increase could be achieved by an improvement in African methods of cultivation. Acting on these principles the commission concluded that each African would need about 14 acres for cultivation, grazing, and for cutting wood. Repeatedly, Macdonnell found himself outvoted by Lane Poole and

Phipps. In a confidential supplement of the 1924 report, he asserted that the 14-acre figure "would be almost like stereotyping a system of semi-starvation."²⁸ This was precisely what J.L. Bruce wanted.

Due to the friction between Macdonnell and the other two commissioners, two reports were finally published. The former one being the 1924 report signed only by Lane Poole and Phipps and termed the majority report. The latter came to be known as the minority report and was signed only by Macdonnell. In terms of the majority report, in the concession area, 9 reserves totalling 3,558 square miles were set aside for the more than 150,000 Africans, while about 6,400 square miles was allotted to the 80 European settlers and those that were expected to follow them.

The report of the 1924 African Reserves Commission was finally approved by the Secretary of State for the Colonies in 1926, when a copy of the report was sent to the NCEC. The Company later claimed that only then did they learn that in terms of the Devonshire Agreement of 1923 the BSAC had

purported to grant to the crown rights over our property. About the agreement we knew nothing until 1926, our paid and trusted secretaries, the British South Africa Company, remaining as silent as the grave on the subject.²⁹

The majority report recommended that the NCEC should be paid compensation for the land taken for African reserves while Macdonnell's minority report recommended that the Company should not be paid compensation because the Crown had the right to take land from the concession since he presumed that the NCEC had given full authority to the BSAC in its negotiation of the Devonshire Agreement to agree that the Crown could take as much land for African reserves from the concession as the Crown deemed proper. The Secretary of State rejected the majority report and accepted the minority one. The Directors of the NCEC claimed that they

could not accept such a report as they had never given the BSAC any authority to bind them to such an agreement and that they had not been aware that so much land would be required for reserves. They complained that according to the land commission,¹/₃ of the concession was uncultivable and yet the commission recommended that 3,558 square miles of good land be set aside as reserves, leaving the NCEC with half of its worthwhile land.

The NCEC always believed that they possessed the right of absolute ownership of their concession by purchase and claimed to have always "acquiesced" to reserves introduced by the BSAC, such as the reserves scheme formulated by Sir Lawrence Wallace in 1913. The NCEC favoured the Wallace proposals rather than the 1924 scheme because only 1,936 square miles were to be taken from their concession. Although the NCEC Board felt that the rights of the Crown according to the 1923 agreement were debateable, they were more concerned after 1925 at the loss of land as they were still hoping for the arrival of many more settlers. But, according to E. Taylor (Department of Native Affairs), the Company had no money to survey the land for farms and thus 'tells the planter to take up his land, select it and then get it surveyed. Thus, the impossibility of getting a surveyor has hindered the occupation of land'.³⁰

Another reason for the objection to the extension of reserves was the government's schemes to promote the growing of economic crops, tobacco and cotton by the Africans in the Eastern Province. These schemes required a lot of land and the NCEC claimed that this would affect European settlers in the concession, who were mainly engaged in the production of tobacco, the output of which for the season 1924-1925 amounted to well over one million lbs.³¹ Therefore, if the government did go ahead with its proposals to promote African commercial agriculture, it would result in an acute shortage of labour and competition with the European settlers. In reply the Colonial Office

maintained that the lands provided

were not meant to be "lands required for sustenance only, but were for..." all purposes necessary for the existence and development of native communities, including the growth of economic crops to provide for taxation and for the purchase of goods..."³²

But the Northern Rhodesian government made little progress with the schemes for promoting the growing of economic crops by Africans.

On 18 June 1926 the NCEC Board was advised by an "eminent counsel" on compensation. This led to an interview with the Parliamentary Under Secretary of State for the Colonies, William Ormsby-Gore. The NCEC representatives stated that 'the company were quite pleased to accept the native reserves on the basis of the recommendations of Wallace....',³³ but argued that,

.... much of the extra land which it is now suggested should be set aside for native reserves is in the immediate neighbourhood of the area which has been proved to be most suitable for white settlement.³⁴

Therefore, if this extra land was taken, then it should be "equitably" replaced by granting the NCEC territory to the north of their concession.

Subsequently on 12 August 1926 the Secretary of State, Amery, wrote to the NCEC rejecting the demand for compensation and threatening the validity of the Company's title. He pointed out that it was at the request of the BSAC that in 1923 His Majesty's Government agreed to include the NCEC in the Devonshire Agreement and to recognise the concession. Amery claimed that without the inclusion of the NCEC in the agreement, the concession would probably not have been recognised.³⁵

Sir Abe Bailey reacted to the rejection of compensation in a private letter to Amery.

you people are too fond of looking after the natives and in your anxiety you try and rob us. I hope you will allow me to see you before finally deciding to prevent a law suit, that does no good to anyone.³⁶

He further stated that the NCEC had done great work to develop the concession and that he himself was spending large sums of money to make the concession a success and so get more Europeans onto the land. The Colonial Office was not prepared to commit the Secretary of State to an interview with Bailey. Strachey claimed that the matter regarding reserves had already been settled with the representatives of the NCEC.³⁷

In February 1927 the NCEC submitted to the pressure from the Secretary of State regarding the validity of the company's title. The Company accepted the 1924 proposals for the allocation of reserves in the concession on condition that, 'whatever doubt may have been felt in the past as to the validity of the company's title that title is now to be taken as recognised and confirmed by His Majesty's Government'.³⁸

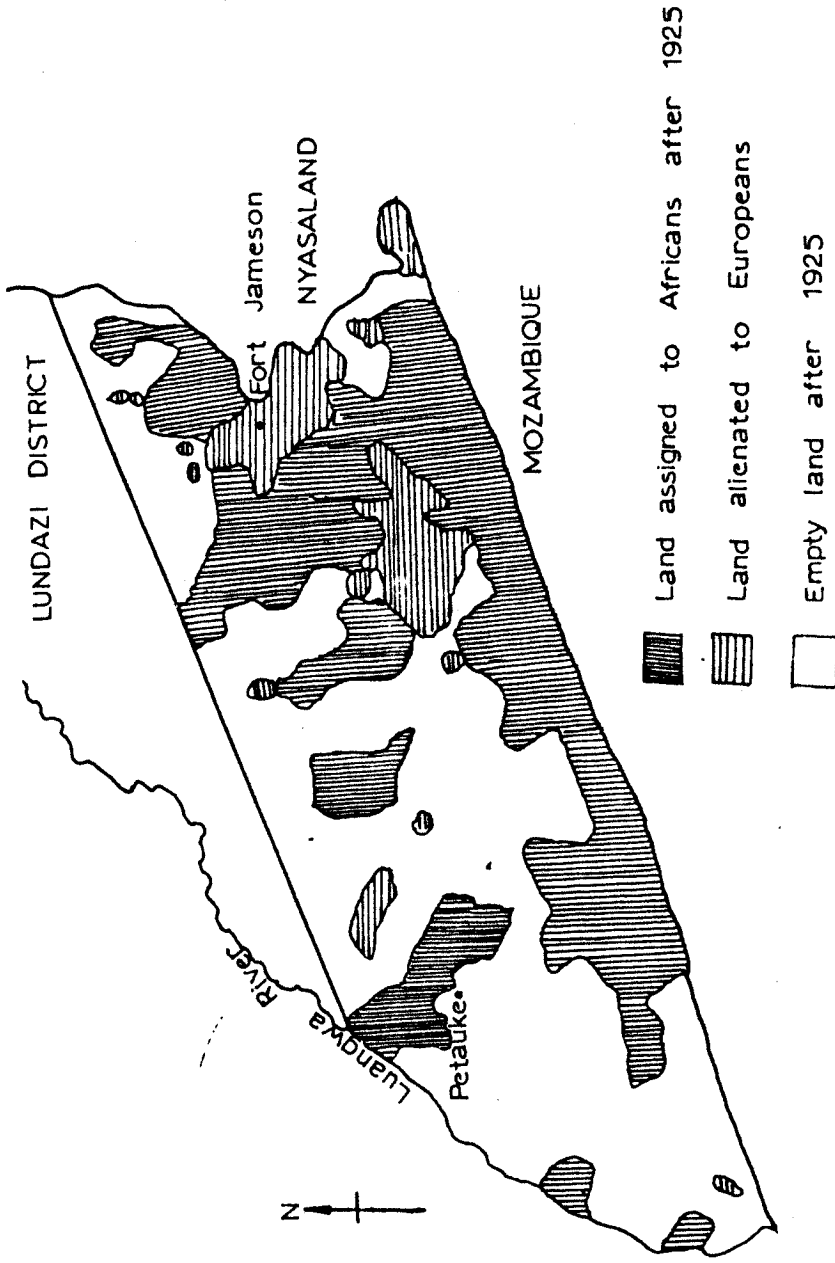
On his return from a visit to the North Charterland Concession, H.B. Spiller, a director of the NCEC, became aware of what had happened in his absence. Disagreeing violently with the rest of the NCEC Board on the acceptance of the 1924 reserve scheme, he discussed the issue with Sir Abe Bailey who advised him to seek an interview with Lord Lovat or Ormsby-Gore.³⁹ Taking Bailey's advice, Spiller wrote to Ormsby-Gore claiming that he only saw the 1924 Land Commission Report after his return from Northern Rhodesia. It was only then that he was aware of a majority and minority report. Spiller went on to argue that Macdonnell's interpretation of the 1923 agreement was invalid and that the question of compensation should be reviewed.⁴⁰ Lord Lovat rejected the interview on grounds that it was a matter for the Colonial Office.⁴¹ In the Colonial Office it was suggested that Ormsby-Gore should decline to see Spiller as the matter had been thoroughly discussed, and settled.⁴²

In December 1927 Spiller informed the Colonial Office that the matter of reserves was not closed because it had never been discussed with the NCEC's

shareholders, and this he intended to do. Then it would be up to them to decide 'what steps to take'.⁴³ In further communication with the Colonial Office, Spiller wrote that he had had a meeting with Sir H. Birchenough and Healey Hutchinson of the BSAC. At the meeting Birchenough stated that the BSAC had struck a good bargain with the Colonial Office for the NCEC in the 1923 agreement. Spiller objected to this and wanted redress because he 'repudiated the right of any unauthorised party to make a bargain' for the NCEC.⁴⁴ It seems that the Colonial Office did not take Spiller seriously and on 28 December 1927 Spiller informed Ormsby-Gore that the NCEC's shareholders had agreed to appoint a committee, including himself to enquire into the whole matter.⁴⁵ On 6 January 1928 the Secretary of State stated that the only concession that the Colonial Office was prepared to make was an assurance that in the event of additions being made to the reserves in the concession, the NCEC would receive compensation.⁴⁶

Spiller replied to the Secretary of State informing him that the whole matter was now in the hands of the committee appointed by the NCEC's shareholders in December 1927. In a further letter of 21 February 1928, it seemed that the company was now taking a new stand, to re-open the entire question of reserves. For the first time the company contested that, though the crown had the right to expropriate land for African reserves or public purposes, 'it cannot do this with land belonging to a private owner without compensation', and repeated its claim to compensation with regard to reserves for the Africans from Portuguese East Africa.⁴⁷

Despite the NCEC's objections the Northern Rhodesia (Crown Lands and Native Reserves) Order-in-Council was promulgated in March 1928. The effect of the Order 'was to establish for the first time Crown land, on the one hand, and reserves on the other'.⁴⁸ The Order recited the agreement of 29 September 1923 regarding the NCEC, and was to be the subject of much further argument, litigation and enquiry.



FOOTNOTES

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26. NAZ/ZP1/1/1, Native Reserves Commission, majority report, 1924-1925, 33-34.
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31. NAZ/RC/101, H. Wilson to Colonial Office, 26 April 1926.
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37. CO 795/19/18345, (Draft) Strachey to Bailey, 19 August 1926, (official reply on 23 August 1926).
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41. CO 795/19/18345, J.J. ^{arkinson}Passium to Spiller, 25 November 1927.

42. CO 795/19/18345, (Draft) Green to Bevin, 29 November 1927.
43. CO 795/19/18345, Spiller to Colonial Office, 5 December 1927.
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CHAPTER IV

DISPUTE AND SETTLEMENT WITH THE COLONIAL OFFICE, 1929-41

In 1928 Sir H. Wilson who was presumably reluctant to adopt this new strategy retired and H.B. Spiller became the new Chairman of the NCEC.¹ The advisory committee of 1927, after a full investigation regarding compensation and reserves in the concession, advised the NCEC to make a Petition of Right against the Crown. The petition was submitted to the Attorney-General Sir William Jowitt on 23 April 1929. Spiller stated to his shareholders that the petition was lodged

because we decline to be bound by an agreement between the Crown and the British South Africa Company, whereby that company, for valuable consideration, not one penny of which did we receive, agreed that the Crown might take as much of our land for Native Reserves as the Crown might deem proper.²

The petition was heard in 1930 by Mr. Justice Luxmore (Judge of the High Court of England). The NCEC argued that their concession was a Crown grant on the basis that the grant was made by the BSAC who were the agents of the Crown. They argued that the Order-in-Council could not set aside land for reserves on a Crown grant and asked that the Order be declared null and void. The Crown lodged a demurrer (a plea in law that, even if the plaintiff's facts are as he says, they yet do not support his case) claiming that by virtue of the Foreign Jurisdiction Act of 1890 the Order-in-Council had the effect of an Act of Parliament. The Crown held out that therefore an Order 'had a superceding effect even over private rights such as the Company was claiming'.³ During the hearing a certificate was produced by the Secretary of State stating that at the date of the Order, the East Luangwa District formed part of a protectorate and was not part of the dominions of the Crown. Upholding the Crown's arguments, Justice Luxmore stated that an Order-in-Council in a protectorate

is the prerogative of the Crown, and that there can be no fetter on such prerogative except such as is imposed by the Imperial Parliament.⁴

Lawyers for the NCEC went on to argue that if the Order-in-Council was valid compensation should be paid for the lands taken for reserves from their concession in terms of the Order. Justice Luxmore held:

It is impossible to construe the Order-in-Council of 1928 as conferring on the suppliant Company (NCEC) any right to compensation. On the contrary I am satisfied that the Order on its true construction negatives any such right.⁵

Thus, on 26 June 1930 the NCEC petition was dismissed.

The NCEC were not discouraged by the demur against them and now sought the Prime Minister's approval for a public enquiry into the circumstances under which the Company was deprived of part of its property without compensation. The Company requested a public enquiry as they believed that they had lost their case against the Crown due to incorrect information being supplied to the Colonial Office at the time of the 1923 agreement such as that, 'the British South Africa Company were the Secretaries of Suppliant Company and that two of their directors were on the Board of the Suppliant Company'.⁶ The NCEC claimed that at no time since the formation of the Company was any director of the BSAC a director of the NCEC. Therefore, the Company felt that the 1923 agreement affecting the rights of the Company was baseless owing to this error by the Colonial Office. According to the NCEC, the Treasury Solicitor acknowledged the error, stating that they should have said that two of the directors of the Company were nominees of the BSAC, but he declined to inform the NCEC of the source of the incorrect information. The NCEC maintained that neither of the nominees in question were informed of the 1923 agreement by either the BSAC or the Colonial Office.⁷ The NCEC still strongly believed that the BSAC had falsely held out to the Secretary of

State that it had the authority of the NCEC to bring the Company to the terms contained in the 1923 agreement and that evidence of this was in the possession of the Colonial Office.

The NCEC expected a fair hearing from the Prime Minister, but to their surprise, Mr. MacDonald informed the Company that the request for an enquiry was a matter for the Secretary of State for the Colonies to decide upon. Towards the end of 1930 pressure was certainly put upon the Colonial Office to make^a decision regarding the public enquiry. This was evident when the Secretary of State, Lord Passfield, received letters from the Prime Minister's office and members of Parliament enquiring into the matter. It seemed that Spiller was using the NCEC's shareholders to exert pressure because the NCEC

has a very large number of British shareholders who have been able to bring considerable pressure through their Parliamentary representatives in the past; these include a number of very active members of the Conservative Party.⁸

These pressures paid off as Lord Passfield granted the enquiry on 26 January 1931. Though the hearing was to take place in London, nothing was said about when it would take place.⁹

Spiller was exasperated at the delay and firmly believed that the delay was a deliberate move by the Colonial Office, in collaboration with the BSAC. In a letter to Commander J.M. Kenworthy M.P. he wrote:

any differences which have arisen between ourselves and the Colonial Office are due.... to the lies told to the Colonial Office by the British South Africa Company who stole my company's documents.¹⁰

This was a serious allegation on the part of Spiller but, surprisingly, Commander Kenworthy tended to agree with the allegation when he, on writing to Sir William Jowitt regarding the delay of the public hearing said:

I hear privately that the Colonial Office people are telling the officials of the North Charterland Exploration Company that the Law Officers are holding the matter up. That, of course, I know to be incorrect, but I mention it because it lends colour to what Spiller alleges.¹¹

What was most interesting and added weight to Spiller's allegations was the interview he had with Sir William Jowitt which was arranged by Kenworthy. According to Spiller, Sir William Jowitt was prepared to give the NCEC evidence proving that the BSAC falsely held out to the Colonial Office that it had the authority of the NCEC to bind the Company to the terms contained in the 1923 agreement.¹² Spiller declined the offer for reasons which are uncertain. 'I explained to him the reason why it would not be acceptable, with which he agreed'.¹³ It seemed that if what Sir William Jowitt said was true then the Colonial Office would be free regarding the dispute and yet one wonders why the Colonial Office never did produce this evidence during the case.

In September 1931 there was still no decision on when the enquiry would take place. This prolonged delay resulted in the shareholders of the NCEC becoming somewhat "restive" and the Colonial Office was subjected to considerable pressure from Spiller regarding the delay.¹⁴ In writing to Sir Robert Hamilton, Kenworthy wrote that he had met with the NCEC's shareholders,

some of whom were very prominent constituents of mine.... and it would be a pity if another campaign was started on the floor of the House of Commons when matters have apparently moved so far towards a just settlement.¹⁵

In October 1931 the Daily Herald stated:-

There is no doubt, whatever that, had the Labour Government remained in office, a public inquiry would have been held which would have fully satisfied the Company.¹⁶

Probably the delay was due to the frequent changes in the holder of the Office of Secretary of State for the Colonies as well as of Governor of Northern Rhodesia during this period. The Colonial Office claimed that documents concerning NCEC affairs before 1923 were destroyed and that they therefore had to consult the Northern Rhodesia Government.

The public enquiry finally opened on 30 May 1932. The appointed Commissioner, Mr. Justice Maugham, under the "Terms of Reference" was asked to decide:

1. Who was the owner of the North Charterland Concession before 29 September 1923.
2. Whether the Concession was subjected to any powers in the Crown or the BSAC to set aside African reserves in the Concession without compensation or with compensation, to the NCEC if they were the owners of that land.
3. In what circumstances did Articles 3(e) and 3(f) come to be included in the 1923 Agreement.
4. Did the NCEC at any time agree to the acceptance of Articles 3(e) and 3(f).
5. Whether the NCEC obtained any advantage from the 1923 Agreement.¹⁷

Although Judge Maugham accepted the formal title granted to the NCEC in 1906, the Company's claim for compensation was rejected. Judge Maugham declared that the Crown had the right without payment of compensation to set aside reserves in the concession as demarcated by the 1924 Land Commission in terms of the Orders-in-Council of 1900 and 1911. These Orders stated that adequate lands must be provided for African occupation. But there was ample evidence that the reserve scheme of 1924 did not provide adequately for the Africans. Therefore, the contention of the NCEC that the reserves were unwarrantably large could not be sustained. For example, in the railway area land set apart for Africans as reserves amounted to 92.8 acres per head of the

population. In Tanganyika Province the area reserved for Africans was 74.8 acres per head while in the North Charterland Concession only 14.19 acres per head was reserved in 1924.¹⁸ In answering question three, Judge Maugham stated that in his opinion there was a clear misunderstanding between the Secretary of State and the BSAC. He further stated that the Company acquiesced to Articles 3(e) and 3(f) in 1926. Finally he held that as the NCEC was not a party to the agreement, it obtained no advantage, but that the Company was fortunate in that it now had a free title to the remainder of its concession and could dispose of land as required.

However, the Company was dissatisfied with the outcome of the enquiry. It complained that two Colonial Office officials who were present during the negotiation of the 1923 Agreement and were, therefore, vital witnesses in the case against the Crown were not present at the enquiry because they were both, it was claimed, in lunatic asylums. After the enquiry it was found that this was untrue as one of the witnesses, Sir Charles Davis, was in sound health.¹⁹ The NCEC lawyers took up the matter with the Treasury Solicitors who stated that the Colonial Office felt that Sir Charles Davis's state of health rendered it undesirable that he should be present at the enquiry. Spiller maintained that:

The only question necessary for him to answer would have been as to who told him the untruth which resulted in our being defrauded of our property.²⁰

During the enquiry the Colonial Office argued that it only became officially aware of a large tract of land known as the North Charterland Concession during the negotiation of the 1923 Agreement. The Colonial Office's awareness of all this though it denied it, was indicated by Sir Thomas Inskip (Attorney-General) when he said,

the Commissioner's assumption that the correspondence of 1895 was not known to the Colonial Office in 1923 is not, in fact, correct... copies were available in the Colonial Office.²¹

Spiller felt that the enquiry had failed in its objective due to the lack of evidence from the Colonial Office, and applied to the Prime Minister for a second public enquiry.

The hearing was granted and again conducted by Judge Maugham. In a further report published in May 1933 Maugham reaffirmed the findings he had already made in his first report. But Spiller continued to assert his former views and requested an interview with the Secretary of State for the Colonies. This was blankly refused and Sir Philip Cunliffe-Lister stated:

The Company's grievances have been exhaustively dealt with and disposed of in Lord Justice Maugham's two reports, and the Company has been informed that these reports must be regarded as a final determination of its claims.²²

According to Gann, the Company's "belligerent Chairman" refused to give up the fight and launched a propaganda campaign against the Colonial Office with the support of some 100 members of Parliament.²³ The Company had already spent a lot of money in the case against the Crown and J.L. Bruce later complained that the litigation 'cost the Company more than it could afford and without the slightest benefit'.²⁴ By 1936 the Company's resources were once again exhausted and in 1936 Spiller lost his seat on the NCEC Board. Bruce wrote:

The final result of the litigation was that the Company went into voluntary liquidation and was reconstructed as the NCEC (1937) Ltd. and its capital was written down. It came under control of the London & Rhodesia Mining Coy. Ltd. and its head office was transferred to Salisbury (S.R.).²⁵

At the time of the 1932 enquiry a loan of £20,000 was taken by the NCEC, repayable at high interest in the event that the Company won the case and it was believed that ^{the} London and Rhodesia Land and Mining Company Limited provided this sum in exchange for a mortgage on the concession.²⁶ In 1937 the Company was reconstructed. According to K. Bradley and R.H. Fraser, the existing 5 shilling shares were written down to 1 shilling, making £60,000 and a new flotation was made under the "aegis" of the Lonrho group. Bradley and Fraser estimated the cost of the Concession to Lonrho at £80,000.²⁷

By the late 1930's the inadequacy of the existing reserves in certain areas had become so serious that local administrative officers at Fort Jameson became 'apprehensive at the increasing impoverishment of the people that the land policy was causing'.²⁸ In 1938 there were only about 65 farms occupied by Europeans in the Fort Jameson District while the rest of the European farms reverted to bush due to absentee owners. In the North Charterland Concession alone there were 95 to 100 unoccupied farms.²⁹ According to Vail the Northern Rhodesia Government was not prepared to implement a policy of improving African agricultural techniques due to the lack of money, markets for cash crops and adequate labour for this kind of intensive farming. Local officers urged the Government to relieve the pressure in the reserves by acquiring the vacant land of the NCEC. Recognizing the need to increase the reserves, the Government approached the NCEC. Being unsuccessful in its settlement scheme the Company was anxious to exploit the situation. This was evident when Governor Maybin minuted after a conversation with the Lonrho and NCEC Chairman Digby Burnett:

I suggested to him that 'native' land was of no value of any sort to the Company. He replied that it had a sale value as government was under a moral obligation to provide more land for the Reserves. I pointed out that the argument came strangely from his Company... I think that... the Company intends to make a hold up.³⁰

Negotiations for land for Africans between the Northern Rhodesia Government and the NCEC began in 1937 and it was only in 1941^{that} the Company finally sold all of the Concession to the government, except for 20,000 acres which the Company argued it needed to safeguard the European farmers in the Concession.³¹ The prolonged delay was due to the continual refusal of the Company to accept the various offers made by the Northern Rhodesian Government. In May 1939 Digby Burnett offered to sell the whole 3,776,741 acres of the Concession for £300,000, but retaining their mineral rights.

In suggesting this figure he said that he had in mind that this sum would to a certain extent compensate the shareholders for previous losses.³²

Six months later Lonrho spurned a counter offer of £63,000. The Government then proposed £56,530 for 1,341,620 acres or £75,000 for the whole area,³³ but the Company declined. Frustrated by the continual refusal of the NCEC to come to some agreement, Governor Maybin decided to acquire land from the NCEC compulsorily, but the Colonial Office refused to "contenance" this decision.³⁴ Finally the case went to the Arbitration Court which consisted of 3 members elected with the approval of both parties.³⁵ The arbitrators awarded the NCEC £155,481 for 3,776,741 acres.³⁶ The outcome of the arbitration thus justified the continual refusal of the Company to accept the

various offers made by the Northern Rhodesian Government. The arbitrators awarded the Company more than double the amount offered by the Government in its final offer before the case went to the Arbitration Court. In October 1941 the issued capital of the Company was £164,523 in 1 shilling shares, which were 'recently bought on the London Stock Exchange at 1s. 7½d., but which dropped to 1s. 3d. on the announcement of the award'.³⁷ Thus ended the history of the NCEC's Concession.

FOOTNOTES

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33. 'The North Charterland Award, Equals almost a shilling a share', East Africa and Rhodesia, 16 October 1941, 107.
34. NAZ/SEC3/304, Volume II, Minutes of the Executive Council, 25 January 1940, Colonial Office to Governor Maybin, 19 April 1940.
35. NAZ/SEC3/305, 'Arbitration between the Government of Northern Rhodesia and the NCEC (1937) Ltd., 'Report of the Attorney-General', 13 August 1941. The Government elected one member, the Company one and the Chairman (Sir Robert McIlwaine-Judge of the High Court of Southern Rhodesia) was jointly agreed upon by both parties.
36. NAZ/SEC3/305, 'The North Charterland Award', 3 October 1941. The land sold was in the north eastern part of the Concession.
37. 'North Charterland Award, Equals almost a shilling a share', East Africa and Rhodesia, 16 October 1941, 107.

CONCLUSION

H.B. Spiller who dominated the affairs of the NCEC from 1927-1936 appears to have become obsessed with the case against the Colonial Office. He may have believed that he was leading a crusade for his shareholders, and that he could save the Company by obtaining compensation for the reserves carved out of the Concession. But he destroyed the Company, as J.L. Bruce said, through litigation. The result was that it lost its independence and became a subsidiary of Lonrho.

It was probably the danger of unrest among the people in the district, due to the intolerable conditions in the existing reserves, and the importance of the Eastern Province as an area of recruitment in the Second World War that persuaded the Northern Rhodesian Government to buy the remainder of the Concession from Lonrho through arbitration. The Northern Rhodesian Government had to bear the cost, and thus the burden fell upon the people of the country who had already had to endure a great deal as a consequence of a dubious concession granted by the BSAC as part of a settlement with its rival the Oceana Company.

The effect of the long dispute between the Colonial Office and the NCEC, which had largely arisen from the 1923 Agreement between the Colonial Office and the BSAC, described by Sir Charles Davis as an 'ignominious surrender'¹, had been to delay the undoing of the damage done by the original granting of the Concession. The recommendation in 1944 of the Commission set up to enquire into the future of the area acquired by government from the NCEC that only 81,100 acres should be set aside for postwar European settlement around Fort Jameson² marked the end of the area as a major centre of European agriculture. After prolonged discussion most of the area

was in 1947 declared to be Native Trust Land.

The Northern Rhodesian Government's purchase of the remainder of the Concession in 1941 was an admission that the Colonial Office had made in 1923, through its implicit recognition of the Concession an expensive mistake. This may not have been as expensive as its simultaneous mistake in relation to the Northern Rhodesia mineral royalties but it was one which had, as Vail has shown, serious consequences for many of the people of the Eastern Province.

The History of the NCEC's dispute with the Colonial Office demonstrates the extreme sensitivity of the Colonial Office to the pressure which could be exerted on it by even such an unsuccessful capitalist enterprise as the NCEC. Pressure from small shareholders on their members of Parliament, with possibly further pressure in the background from Sir Abe BAiley, the influential South African mining magnate, forced the Colonial Office to spend an immense amount of time and energy on the NCEC and its claims.

FOOTNOTES

1. Co/795/42/306021, Part I, Green to Sir C. Bottomley 28 May 1931.
2. NAZ/SEC/3/318, Statement by Northern Rhodesia Government on the Report by the Land Commission on the Area Acquired by the Government from the NCEC, 4 August 1944.

APPENDIX

PART I I.

No. 69.

AGREEMENT BETWEEN THE SECRETARY OF STATE FOR THE COLONIES AND THE BRITISH SOUTH AFRICA COMPANY FOR THE SETTLEMENT OF OUTSTANDING QUESTIONS RELATING TO SOUTHERN AND NORTHERN RHODESIA.

Memorandum of Agreement dated 29th day of September, 1923, between His Majesty's Secretary of State for the Colonies on behalf of His Majesty (hereinafter referred to as "The Crown") of the one part and The British South Africa Company incorporated by Royal Charter, whose Offices are situate at No. 2 London Wall Buildings in the City of London (hereinafter referred to as "The Company", which expression shall be deemed to include the Company's Successors and Assigns) of the other part whereas by Royal Charter dated 29th October, 1889, the Company was incorporated and was authorised and empowered to hold use and retain for the purposes of the Company and on the terms of the said Charter certain concessions and agreements and to acquire rights interests authorities jurisdictions and powers including powers necessary for the purposes of government and the preservation of public order in or for the protection of (inter alia) certain territories lands or property in the said Charter more particularly indicated (which said territories lands and property are hereinafter referred to as "Southern Rhodesia") and whereas by article 33 of the said Charter there was expressly reserved to the Crown the right and power by writing under the Great Seal of the United Kingdom at the end of 25 years from the date of the said Charter and at the end of every succeeding period of 10 years to add to alter or repeal any of the provisions of the said Charter with proviso that such right and power should be exercised only in relation to so much of the

said Charter as related to administrative and public matters and whereas by the same article of the said Charter there was expressly reserved to the Crown the right to take over any buildings or works belonging to the Company and used exclusively or mainly for administrative or public purposes on payment to the Company of such reasonable compensation as might be agreed or as failing agreement might be settled by the Commissioners of the Treasury and whereas the said Charter was amended by a further Charter granted by Her Late Majesty Queen Victoria on the 8th day of June, 1900, and whereas the period of 25 years above referred to expired in October, 1914, and whereas by a Supplemental Charter dated 13th March, 1915, it was provided that so much of Article 33 of the Principal Charter as provided that it should be lawful for the Crown at the end of twenty-five years from the date of the said Charter and at the end of every succeeding period of ten years to add to alter or repeal any of the provisions of the said Charter relating to administrative and public matters or to enact other provisions in substitution therefor or in addition thereto should be read and construed subject to the proviso that if at any time after the 29th day of October, 1914, the Legislative Council of Southern Rhodesia should be an absolute majority of the whole number of the members of the Council as then constituted pass a resolution praying the Crown to establish in Southern Rhodesia the form of government known as Responsible Government and should support such resolution with evidence showing that the condition of the territory financially and in other respects was such as to justify the establishment of the form of government aforesaid it should be lawful for the Crown if thought fit to accede to the prayer of such resolution to add to alter or repeal any of the provisions in the said Charter relating to administrative and public matters or to enact other provisions in substitution therefor or in addition thereto for the purpose of establishing responsible

government and further that the Company should not be entitled to compensation in respect of any such buildings or works as aforesaid which could be shown to have been wholly provided out of the administrative revenue between the 29th day of October, 1914, and the date on which the said buildings and works should be taken over such period being taken as a whole and where any such buildings and works could be shown to have been partly so provided during the said period taken as a whole the Company should be entitled to claim compensation in respect only of such proportion of the value of the said buildings and works as that part of the original cost which should not at the date of their being taken over as aforesaid have been provided out of administrative revenue might bear to the total cost of the said buildings and works and whereas in the year 1914 certain questions arose between the Company and the Legislative Council of Southern Rhodesia with regard to the ownership of unalienated lands and whereas by Order in Council dated 16th day of July, 1914, the question of the ownership of these unalienated lands was referred to the Judicial Committee of the Privy Council before whom the Crown the Company the elected members of the Legislative Council of Southern Rhodesia and the Natives of the Territory were represented and whereas by their Report delivered the 29th day of July, 1918, The Lords of the Judicial Committee declared inter alia that so long as the Company continued to administer Southern Rhodesia under the Crown it was entitled to dispose of the unalienated lands in due course of administration and to apply the moneys or revenues derived therefrom in duly reimbursing all proper outlays on administrative account in the current or in past years and if its administration of Southern Rhodesia should be determined by the Crown then the right to look to the Crown to secure to it (either out of the proceeds of further sales of the lands by whomsoever made or if the Crown should grant away these lands or proceeds

to others from public funds) the due reimbursement of any outstanding balance of aggregated advances made by it for necessary and proper expenditure upon the administration of Southern Rhodesia, but this and the other rights in the said Report before mentioned did not vest in the Company dominion or estate in or title to the said unalienated lands and whereas on the 2nd day of August, 1918, an order was made by His Majesty in the terms of the said report and whereas a Commission appointed by His Majesty's Secretary of State for the Colonies to take an account of what would have been due to the British South Africa Company if the administration of Southern Rhodesia by the Company had been determined on the 31st March, 1918, settled and approved an account in the sum of £4,435,225 subject to a deduction in respect of (a) the value of lands appropriated by the Company to its commercial purposes and (b) the proceeds or value of lands or rights alienated by the Company for considerations other than cash and with the addition of a sum representing the compensation payable for public works and buildings which might be taken over under article 33 of the Charter but rejected the Company's claim for interest and whereas on the 17th day of May, 1920, the Legislative Council of Southern Rhodesia by an absolute majority of the whole number of the members of the Council as then constituted passed a resolution praying that Responsible Government should be established forthwith and whereas disputes have arisen between the Crown and the Company which have resulted in a Petition of Right dated the 7th day of March, 1922, being 10 presented which said Petition of Right duly received the Royal hat is now pending the Crown having delivered an Answer and Plea and whereas under the provisions of the said Charter and by virtue of divers purchases, concessions Orders in Council and Agreements the Company obtained certain rights in relation to land and territories in Africa North of the Zambesi River (which said lands and territories are hereinafter referred to as Northern Rhodesia)

and were empowered to undertake the administration thereof and whereas doubts and disputes have arisen between the Crown and the Company with reference to certain questions relating to Northern Rhodesia and whereas disputes have also arisen between the Crown and the Company as to whether certain extraordinary expenditure in connection with the recent war incurred both in Northern and Southern Rhodesia should fall on the Crown or the Company and whereas the Crown is desirous of meeting the wishes of the Legislative Council of Southern Rhodesia and to set up Responsible Government there at an early date and in accordance with the Supplemental Charter above referred to terminate the Company's Administration of Southern Rhodesia on the 1st day of October, 1923, and for this purpose is also desirous of terminating all questions in dispute with the Company and whereas negotiations to this end have been conducted between the Crown and the Company with the result that the Agreement hereinafter contained has been arrived at and it has further been agreed that it is desirable in the interests of all concerned that the Company's Administration of Northern Rhodesia should terminate as from the 1st April, 1924, and that as far as possible all other questions in dispute between the Crown and the Company in relation to both Northern and Southern Rhodesia should be settled now it is hereby agreed by and between the parties hereto as follows:-

1. For the consideration hereinafter mentioned

(A) The Company abandons all claims under the said order made by His Majesty or other wise in respect of the administrative deficits incurred by the Company in Southern Rhodesia up to the date of the determination of its Administration.

(B) The Company will forthwith upon the execution of this agreement take all necessary steps to withdraw the Petition of Right now pending on its behalf.

(C) The Company abandons all rights and interests (except as hereinafter mentioned) in the lands in Southern Rhodesia other than the lands appropriated by it for its commercial purposes, that is, the estates, farms and ranches which the Company was developing and working on commercial lines as on the 10th day of July, 1923.

(D) The Company shall on the 1st October, 1923, deliver possession to the Crown or as the Crown shall direct of all works and buildings used exclusively or mainly for the administrative or public purposes of Southern Rhodesia together with the movable assets of the Southern Rhodesia Administration.

(E) The Company agrees that the Crown shall be entitled to the excess of debts due to the Company in its administrative capacity in Southern Rhodesia on the 1st October, 1923, over debts due by the Company in such capacity on such date. In pursuance thereof the Company agrees to assign and transfer to the Crown or as the Crown may direct all debts due to the Company in its administrative capacity on the 1st October, 1923, and in so far as these presents are effectual to assign and transfer such debts the Company hereby assigns and transfers the same to the Crown. The Company further agrees that if prior after the 1st October, 1923, any such debts be paid to the Company the Company shall account for and pay over any amounts so received to the Crown or as the Crown may direct. The Crown shall make due provision for the discharge of debts due by the Company in its administrative capacity in Southern Rhodesia on the 1st October, 1923.

(F) The Company agrees to assign and transfer to the Crown all net assets falling on the 1st day of October, 1923, within the category of "Capital expenditure &c. in connection with Land Settlement" under the classification of assets adopted in the Company's published accounts.

(G) Within six months after the execution hereof Schedules of the public works, buildings, assets and debts referred to in sub-paragraphs (D) (E) and (F) hereof for the purpose of identifying the same shall be prepared by the new Administration and certified by the Auditor General in the same manner as the Schedules of such public works buildings assets and debts have been prepared hitherto for the purposes of the Company's published accounts and the public works buildings assets and debts hereinbefore referred to shall be the public works buildings assets and debts in the same schedules so prepared and certified.

(H) The Company shall on the 1st day of October, 1923, transfer to the new Administration in Southern Rhodesia all separate funds connected with its Administration and in particular the Pension Funds, the Guardian's Fund, the Public Service Guarantee Fund and the Post Office Savings Bank Funds.

(I) Any balances remaining unspent on the 1st day of October, 1923, of the sums advanced to the Company in its administrative capacity from the Imperial Exchequer during the years 1922 and 1923 for the purposes of public works in Southern Rhodesia together with any interest earned on such amounts shall be handed over by the Company to the new Administration in Southern Rhodesia.

(J) The Company warrants that it has not since the 10th July, 1923, dealt otherwise than in accordance with its previous policy and practice with (a) the lands in Southern Rhodesia (b) the public works and buildings (c) the movable assets (d) the debts due to and owed by the Company in its administrative capacity (e) the net assets represented by the item "Capital expenditure etc. in connection with Land Settlement" and (f) the separate funds connected with its administration.

(K) The Company shall pay over to the new Administration all net receipts for the period 1st April, 1923, to 30th September, 1923 inclusive arising out of or in connection the lands in Southern Rhodesia referred to in sub-paragraph (c) hereof such net receipts being calculated on the basis adopted in the published accounts of the Company; and in addition the usual quit-rent in respect of the said lands appropriated by the Company for its commercial purposes.

2. The Crown on its part agrees that

(A) Subject to any agreement which has been or may be entered into between the Company and the Elected Members of the Legislative Council of Southern Rhodesia the Company shall retain any cash which on the 30th day of September, 1923, may be in the hands of the Company's Administration and is held without any right title or interest therein on the part of any other person firm or body and being cash other than cash forming part of the separate funds hereinbefore referred to or other than cash or the proceeds of assets as to which provision to the contrary is made herein.

(B) The said lands in Southern Rhodesia appropriated by the Company for its commercial purposes shall vest in the Company and as soon as may be practicable title shall issue in respect thereof in such terms and on such conditions as to payment of the usual quit-rent to the Governor in Council and otherwise as may in the event of disagreement between the Company and the Governor in Council be deemed to be proper by the Secretary of State.

(C) The Crown abandons all claims upon the Company in respect of (i) the value of lands referred to in sub-paragraph (B) hereof (ii) the proceeds or value of lands and rights alienated by the Company for considerations other than cash.

(D) Subject to the law as in force for the time being in Southern Rhodesia the Crown recognises the Company as the owner of the mineral rights throughout that territory save in so far as the Company has by its own acts parted with such rights.

3. With respect to Northern Rhodesia it is mutually agreed that

(A) The Crown shall as from the 1st day of April, 1924, relieve the Company of the Administration of Northern Rhodesia as now exercised.

(B) The Crown shall subject to the deductions hereinafter mentioned pay to the Company half of the actual realised Administrative deficit for the whole year from the 1st day of April, 1923, to the 31st day of March, 1924 (as soon as the amount thereof has been ascertained) or the sum of £50,000 whichever may be the less.

Provided, however, that the Crown shall be entitled to deduct from the amount so to be paid (1) one-fourth part of the proceeds derived from the sale or lease by the Company of lands in North-Western Rhodesia (as it

existed immediately prior to the amalgamation of North Western and North Eastern Rhodesia in 1911) during the year 1st April, 1923, to 31st March, 1924, such sums to be calculated after making provision for the expenses of land management in such territory and of the collection of all land revenues accruing therefrom and (2) one-half of the sums (calculated in the same manner) received by the Company during the same period from the sale or lease of lands elsewhere in Northern Rhodesia other than the three freehold areas in North-Eastern Rhodesia held by the Company by virtue of the concessions approved by the certificates of claim issued by Sir H.H. Johnston and dated as to two of them 18th September, 1893 and as to the third 20th September, 1893.

(C) The Crown shall pay to the Company as soon as possible after 1st April, 1925, and thereafter as soon as possible after the close of each financial year one-half of the sums received by the Crown in each year up to 1st April, 1965, from the sale or lease of lands in North-Western Rhodesia (as it existed immediately prior to the amalgamation of North-Western and North-Eastern Rhodesia in 1911) after making provision for the expenses of land management in such territory and of the collection of all land revenues accruing therefrom. Provided also and it is hereby agreed by and between the parties hereto that all moneys payable to the Company in respect of land transactions in North-Western Rhodesia (as above defined) effected prior to the 1st April, 1924, shall be paid to the Crown or as the Crown shall direct. Provided, however, that such last mentioned moneys shall as and when received be divided between the Crown and the Company as hereinbefore provided with respect to subsequent transactions.

(D) The Company shall be entitled to retain the said three freehold areas held by it in North-Eastern Rhodesia by virtue of the concessions approved by the aforesaid certificates of claim issued by Sir H.H. Johnston and shall be entitled to retain for its own benefit the proceeds of any alienations whenever made of any part or parts of such freehold areas.

(E) As regards the concession granted by the Company to the North Charterland Exploration Company the Crown reserves the right to set apart such native reserves in the area granted to that Company as the Crown may deem proper.

(F) The Crown shall recognise all alienations of lands which have been made by the Company in Northern Rhodesia (including North-Western Rhodesia as above defined) on the condition that any moneys due

or accruing on or after the 31st March, 1924, in respect of such alienations are paid to the Crown (subject as regards lands in North-Western Rhodesia to the special arrangements specified above).

(G) Subject to the provisions hereinafter contained the Company shall retain and the Crown shall recognise the Company as the owner of the mineral rights acquired by the Company in virtue of the concessions obtained from Lewanika in North-Western, Rhodesia and concessions in North-Eastern Rhodesia covered by the aforesaid certificates of claim issued by Sir H.H. Johnston and by the two further certificates of claim issued by Sir H.H. Johnston and dated the 25th September, 1893.

(H) The exercise by the Company of the aforesaid mineral rights shall be subject to the general laws and regulations obtaining from time to time in the said territory. Provided that in any instrument providing for the future government of Northern Rhodesia the Company's mineral rights there shall be granted a measure of protection no less effective than that granted to the Company's mineral rights in Southern Rhodesia by the Southern Rhodesia Constitution Letters Patent dated 1st September, 1923.

(J) On the termination of the Company's Administration of Northern Rhodesia the existing civil servants shall retain all their present rights and the Crown shall be liable for future payments of pensions to civil servants who may then have retired on pension.

(K) The Crown recognising that the Company is entitled to protection in view of the magnitude of the investment made by it in the Railways already constructed in Northern and Southern Rhodesia and of the very heavy burden of financial obligation assumed by it in guarantees which it has given to the Debenture holders of the Railway Companies operating in Northern and Southern Rhodesia undertakes:-

(I) That in any instrument providing for the future Government of Northern Rhodesia a measure of protection shall be granted to the Railway Companies operating there no less effective than that given to the Railway Companies in the Southern Rhodesia Constitution Letters Patent above referred to.

(II) That no new Railway or railways shall be constructed in Northern Rhodesia except under the authority of special legislation in each case and that such legislation shall not be enacted unless His Majesty's Government after full consideration are satisfied that the new railway or railways to be constructed will not have an unduly adverse effect on the Railway Companies operating in Northern and Southern Rhodesia and that those Companies are not providing and are not prepared to provide facilities reasonably equivalent to those to be given by such proposed new railway or railways.

(III) To Accord the most favourable consideration which the public interests will allow to any schemes which the existing Railway Companies may submit for extending their present systems in the Territory.

4. In consideration of the premises

(A) The Company shall carry on (but only in accordance with its previous policy and practice) the administration of Northern Rhodesia

from the 1st October, 1923, to 31st March, 1924.

(B) Subject as hereinbefore provided the Company shall abandon any claim to reimbursement of any part of the administrative deficit incurred by the Company during its administration of the territory now comprised in Northern Rhodesia.

(C) The Company shall pay to the Crown on the 1st day of April, 1924, a sum equal to the excess if any of the debts due from the Company in its administrative capacity in Northern Rhodesia over the total debts due to the Company as on that date in such capacity and conversely if the debts due to the Company in such capacity exceed the debts due from the Company in such capacity as on that date the Crown shall pay to the Company a sum equal to such excess: and in so far as these presents are effectual to assign the same the Company hereby assigns and transfers to the Crown the debts due to the Company on such account. The amount of such debts and credits shall be determined in the same manner as they have hitherto been determined for the purpose of the published accounts of the Company.

(D) The Company shall on the 1st day of April, 1924, deliver possession to the Crown or as the Crown shall direct in Northern Rhodesia all works and buildings used exclusively or mainly for the administrative or public purposes of Northern Rhodesia together with the movable assets of the Northern Rhodesia Administration which said works and buildings and movable assets shall be specified in a schedule or schedules to be prepared and certified by the new Administration in the same manner as the annual schedules of public works and buildings and movable assets have hitherto been prepared for the purposes of the Company's published accounts.

(E) The Company as from the 1st day of April, 1924, assigns and transfers to the Crown all such rights and interests in lands as it claims to have acquired by virtue of the concessions granted by Lewanika upon which date the full and entire control of the lands throughout North-Western Rhodesia as well as elsewhere in Northern Rhodesia shall be taken over by the Crown and thereupon (subject as hereinbefore provided) the Crown shall be completely free to administer such lands in such manner as the Crown may in its discretion deem best in the interests of the Native population and in the public interests generally.

(F) The Company shall not make and warrants that it has not made any grant of land in Northern Rhodesia (elsewhere than in the three freehold areas hereinbefore referred to) whether by sale, lease or otherwise subsequent to the 10th day of July, 1923, save with the approval of the Resident Commissioner in Rhodesia obtained in writing.

(G) The Company as from the 1st day of April, 1924, assigns and transfers to the Crown all administrative and commercial rights (other than mineral rights) granted to the Company by the concessions obtained from Lewanika in North-Western Rhodesia and the concessions in North-Eastern Rhodesia covered by the certificates of claim referred to in paragraph 3 (G) but the Company shall continue to observe all obligations

(other than administrative obligations) provided for in such concessions including the obligation under the concession granted by Lewanika dated 17th October, 1900, to pay to the Paramount Chief of the Barotse an annual subsidy of £850.

(H) Subject as hereinbefore provided the operations of the existing railway companies in Northern Rhodesia shall also be subject to such general laws and regulations as the Administration may find necessary.

(J) The Company shall (as in the case of Southern Rhodesia) transfer to the new Administration immediately upon the termination of the Company's administration of Northern Rhodesia all separate funds now existing in connection with the Company's administration but any cash in the hands of the Company or at its banks at that date other than cash forming part of any such separate funds or other than cash or the proceeds of assets as to which provision to the contrary is herein contained shall be retained by the Company.

(K) As from the 10th day of July, 1923, no new appointments in Northern Rhodesia shall be created by the Company nor shall any vacancies in existing appointments be filled without the concurrence of the High Commissioner for South Africa and no officers of the Northern Rhodesia Civil Service shall be retired on pension (except on grounds of ill-health or as having reached the retiring age) without a like concurrence and the Company warrants that since the 10th day of July, 1923, no such appointments have been created, vacancies filled or officers retired without such concurrence.

(L) The Company undertakes as from the 10th day of July, 1923, not to deal and warrants that since such date it has not dealt otherwise than in accordance with its previous policy and practice with the public works and buildings, the movable assets, the debts due to and owing from the Company and the separate funds connected with its administration in Northern Rhodesia.

5. With respect both to Southern Rhodesia and Northern Rhodesia the Company undertakes that it will execute all conveyances, assurances, assignments or documents and will do all things requisite or necessary to give effect to this agreement or to vest in or transfer to the Crown or to the new Administration of Southern Rhodesia the property, assets or rights hereby agreed to be transferred, vested in or assigned to the Crown or to such new Administration and hereby irrevocably authorises the Crown or the new Administration to use and sue in the name of the Company to recover or enforce any such property, assets or rights, and in so far as these presents

are effectual to vest, assign and transfer property, assets or rights, the Company hereby vests, assigns and transfers the property, assets and rights as hereinbefore provided.

6. In consideration of the premises

(A) The Crown shall on the 1st day of October, 1923, pay to the Company the sum of £3,750,000.

(B) The Crown abandons its claim against the Company for the reimbursement of any part of the advances, amounting to £1,953,826 made to the Company in respect of the extraordinary war expenditure incurred by the Company in connection with the late war.

7. In the construction of this Agreement the word "lands" in paragraphs 3 (B), 3 (C), 3 (F), 4 (E) and 4 (F) shall be deemed to include land and water and all rights therein and thereover save as may be otherwise provided.

8. If any dispute, difference or question shall at any time hereafter arise between the parties hereto in respect of the construction of these presents or concerning anything herein contained or arising out of these presents or as to the rights, liabilities or duties of the said parties hereunder the same shall be referred to the arbitration of some person to be agreed upon by the said parties, or failing agreement, to be nominated by the Lord Chief Justice of England for the time being or failing such nomination, as the law provides in accordance with and subject to the provisions of the Arbitration Act, 1889, or any statutory variation, modification or re-enactment thereof for the time being in force.

The Common Seal of the British South Africa Company was affixed hereto pursuant to a resolution of the Board of Directors passed and dated the 27th day of September, 1923, in the presence of:-

D.O. MALCOLM.)
EMILE B. d'ERLANGER.) Directors.

SEAL
of the
COMPANY

A.P. MILLAR, Secretary.

DEVONSHIRE.

Signed by His Majesty's Secretary of State for the Colonies in the presence of:-

EDWARD MARSH.

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