FALKLAND ISLANDS.

Governor's Office.

No. 461/15.

From	SUBJECT.
Secretary of State for the Colonies.	GUANO Agreement with Dr. Newton for a Lease of certain rights to work for

No.	Date
127	24th Novr., 1915.

Colonial Secretary's Record No. 72/16.

Registered Number of last Despatch.

No. next Despatch. 499/16

MINUTES.

Hon Col Sec.
For your information.
18.1.16 [illegible]
for

H.E. / Noted. Please also see C.S. 72/16 herewith and C.S. 135/15 and C.S. 181/11 attached thereto.
C.A. Condell
C.S.
20.1.16.

[illegible]
20.1.16

Copy.

FALKLAND ISLANDS.

No. 136.

Government House, Stanley.

18th November, 1914.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 105 of the 14th October calling my attention to the fact that your despatch No. 45 of the 23rd May remained unanswered.

2. I regret that at this time it is utterly impossible for me to take any steps towards undertaking a general survey of the guano deposits on Crown lands in this Colony.

3. I would suggest that in view of the concession granted, subject to your approval, to Dr. Bermingham Newton, as reported in my despatches Nos. 126 and 130 of the 5th and 7th October respectively, the opening up of the guano industry in the Falkland Islands might for the time being be left in the hands of Dr. Newton, or of any Company to whom he may transfer his rights.

I have , etc.

(Sd.) W. L. Allardyce.

Governor.

THE RIGHT HONOURABLE

THE SECRETARY OF STATE FOR THE COLONIES.

Copy.

FALKLAND ISLANDS.

No. 9.

Downing Street,

25th January, 1915.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 136 of the 18th November, and to inform you that I agree that the opening up of the guano industry in the Falkland Islands should for the time being be left in the hands of Dr. Newton or of any Company to whom he may transfer his rights.

I have , etc.

(Sd.) L. Harcourt.

GOVERNOR

W. L. ALLARDYCE, ESQ., C.M.G.

&c., &c., &c.

FALKLAND ISLANDS
No. 127.

DOWNING STREET,
24th November, 1915.

C.A. 20 Aug.'15.
To C.A. 27 Aug.'15.
C.A. 3 Nov.'15.
Agreement

Sir,

With reference to my predecessor's despatch No.9 of the 25th January, I have thehonour to transmit to you a copy of correspondence with the Crown Agents for the Colonies, together with a copy of the agreement with Dr.Newton for a concession to work guano deposits on Cochon and Kidney Islands.

2. You will observe that the Agreement provides that a Lease, in a form scheduled to the Agreement, will be granted not to Dr.Newton personally, but to a Company to be formed by him within a certain limit of time (viz twelve months) with the requisite amount of working capital subscribed. This is the usual procedure and was adopted in the case of the Falkland Islands Fur Seal Company.

3. The definition, in clause 3 of the Lease, of gross profits for the purpose of assessing royalties was arrived at by arrangement between the Crown Agents and Dr.Newton and was designed to obviate the possibility of evasion of the intention of the agreement. Dr.Newton originally proposed that the royalty should be on a sliding scale varying according to the dividend paid by the Company, but the Crown Agents pointed out that such a condition lends

GOVERNOR

W.D.YOUNG, ESQ., C.M.G.

etc., etc., etc.

lends itself to easy evasion.

I have the honour to be,

Sir,

Your most obedient

humble Servant,

A. Bonar Law

Sec

Falklands 41

ENCLOSURE TO DESPATCH
No. 127 OF 24/11/15

20th August, 1915.

Sir,

FALKLAND ISLANDS

With refererence to your letter No. 11940/1915 of the 22nd. March, I have the honour to report that the proposed Agreement with Dr. W.B. Newton, for a concession to work guano deposits on Cochon and Kidney Islands, was submitted to him for signature on the 5th of June in the accompanying form, but that he has not yet executed the document, and I enclose a copy of a letter from our Solicitors explaining the reason for the delay in the matter.

18. 8. 15.

2. We shall be glad to receive the Secretary of State's instructions as to the suggestion contained in the third paragraph of Messrs. Sutton, Cammanney & Rendall's letter.

3. With regard to sub-paragraph 2 of the second paragraph of your letter under reference, our Solicitors have informed us that, inasmuch as Dr. Newton's Solicitors approved the Agreement without

The Under Secretary of State,

&c. &c. &c.,

Colonial Office.

any addition, such as is indicated in Clause 2 of the Lease, they presumed that they did not require it, but that, in order to prevent any misunderstanding on the point, they have communicated with them again in the matter.

4. As regards sub-paragraph 4, it will be seen from Clause 3 of the Lease that it has been agreed that a sum equal to 15 per cent of the gross receipts of the undertaking should be deducted in respect of management expenses.

I have the honour to be,

Sir,

Your obedient servant,

(Sd.) P. Lyschen

for Crown Agents.

MESSRS. SUTTON OMBANEY & RENDALL TO CROWN AGENTS

Sec/Falklands 41

3 & 4, Great Winchester Street,
London, E.C.
August, 18th 1915.

Gentlemen,

FALKLAND ISLANDS

With reference to your letter of the 16th inst. we have to inform you that we have been continually pressing Dr. Newton's Solicitors to return us this Agreement duly signed, and on the 10th instant we wrote to them asking if Dr. Newton had any reason for not executing the Agreement and his Solicitors informed us that they would enquire of their Client on the matter.

However, not having heard further, we yesterday called upon Dr. Newton's Solicitors and they inform us that the matter has been delayed owing to the fact that the sample cargo of guano which Dr. Newton wished to treat by his process and which is referred to in his letter to the Colonial Secretary of the 26th September 1914, has, owing to the War, been delayed in transit, and he does not desire to proceed further with the matter until he has had an opportunity of treating the guano and demonstrating to his friends the practicability of the process which he proposes to adopt.

It will probably not be your desire that the completion

completion of this Agreement should be indefinitely postponed, and we suggest, subject to your concurrence, that we should write to Dr. Newton's Solicitors and inform them that unless the Agreement is executed within a limited time - say three weeks - you will not be prepared to consider the matter further.

We have etc.

SUTTON O'HANNEY & RENDALL.

Copy

38724/1915

Downing Street,

27th August, 1914.

Gentlemen,

I am directed by Mr. Secretary Bonar Law to acknowledge the receipt of your letter (Sec/Falklands 41) of 20th August respecting the proposed agreement with Dr. W. B. Newton for a concession to work guano deposits on Cochon and Kidney Islands, in the Falkland Islands, and to state that he approves of effect being given to the suggestion made by Messrs Sutton Ommanney and Rendall that Dr. Newton's solicitors should be informed that unless the agreement is executed within a limited time - say three weeks - the Secretary of State will not be prepared to consider the matter further.

I am, etc.,

(Sd.) Henry Lambert.

for the Under Secretary of State.

The Crown Agents

for the Colonies.

Sec.
F'lands 41.

8th November, 1915.

Sir,

With reference to your letter No. 38724/1915 of the 27th of August, and to subsequent semi-official communications, I have the honour to report that Dr. W. F. Newton has since executed with us the Agreement providing for the grant to him, upon certain conditions, of a concession to work guano deposits on Cochon and Sidney Islands, and four copies of it are enclosed herewith for the use of your Department and the Government of the Falkland Islands.

4

2. Dr. Newton has paid to our Solicitors their charges and disbursements, amounting to £56. 14. 4d, in connection with the preparation, etc., of the Agreement.

I have the honour to be,

Sir,

Your obedient Servant,

(Sd) P. Ezechiel.

for Crown Agents.

The Under Secretary of State,

&c &c &c

Colonial Office.

FALKLAND ISLANDS

An Agreement made the twenty seventh day of October One thousand nine hundred and fifteen **Between** SIR REGINALD LAURENCE ANTROBUS, K.C.M.G., C.B. MAJOR SIR MAURICE ALEXANDER CAMERON K.C.M.G. late a Major in His Majesty's Corps of Royal Engineers and SIR WILLIAM HEPWORTH MERCER, K.C.M.G., all of Whitehall Gardens in the City of Westminster the Crown Agents for the Colonies (hereinafter referred to as "the Crown Agents" which expression shall in this Agreement include where the context so admits the Crown Agents for the Colonies for the time being or their successors in title) acting for and on behalf of His Majesty's Governor of the Falkland Islands (hereinafter referred to as "the Governor" which expression shall where the context so admits include the Officer administering the Government of the Falkland Islands for the time being) of the one part and WILLIAM BERMINGHAM NEWTON of The Rosary Chesham Bois, Bucks, Ph. D. F.I.C. (hereinafter referred to as "the Concessionaire") of the other part

Whereby IT IS AGREED as follows:-

1. **If** the Concessionaire within Twelve calendar months from the date of this Agreement at the expense in all things of the Concessionaire or of the Company to be formed as hereinafter mentioned shall procure

(a) A Company (hereinafter referred to as "the Company") to be formed and registered under the Companies Acts 1908 and 1913 under such name as shall be agreed upon between the parties hereto with the object (amongst others) of the acceptance and fulfilment of the obligations of such a lease as is hereinafter mentioned and with a Memorandum and Articles of Association providing to the satisfaction of the Crown Agents for such object and also for the Company being and remaining a British Company under British control.

(b) That share Capital of the Company shall be bona fide subscribed by responsible persons to the satisfaction of the Crown Agents so that at least Five thousand pounds thereof over and above the expenses of the promotion of the Company shall be payable in cash at such time or times as shall be approved by the Crown Agents.

(c) That the Concessionaire and the Company shall down to the date of the said Lease have duly performed all the obligations which under any of the provisions of this Agreement ought to be performed by them respectively.

(d) That the Company shall execute and deliver to the Crown Agents a counterpart of the said Lease

Then the Governor will execute in favour of the Company a Lease in the terms of the draft Lease set forth in the Schedule hereto.

2. The Concessionaire shall on the execution of this Agreement pay to the Crown Agents the sum payable by the Crown Agents to their Solicitors for and in respect of their costs charges and expenses in and about the negotiation preparation printing and approval of this agreement and of the form of Lease set forth in the Schedule hereto and shall also on the execution of such Lease pay or procure to be paid by the Company to the Crown Agents all further costs charges and expenses of their Solicitors in and about the completion and execution of such Lease

In witness whereof the Crown Agents have hereunto set their respective hands and seals and the Concessionaire has hereunto set his hand and seal the day and year first above written.

The Schedule hereinbefore referred to

This Indenture made the day of 19 BETWEEN

HIS MAJESTY'S GOVERNOR OF THE FALKLAND ISLANDS (hereinafter called "the Governor" which expression shall where the context so admits include the Officer administering the Government of the Falkland Islands for the time being) of the one part and COMPANY LIMITED a Company incorporated pursuant to the Law of England under the Companies Acts 1908 and 1913 having its registered office at in the of (hereinafter called "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part WITNESSETH that in consideration of the rents and royalties hereinafter reserved and made payable and of the covenants and agreements on the part of the Lessees hereinafter contained the Governor doth hereby grant and demise unto the Lessees full and exclusive liberty and license to search for dig win and work all deposits of penguin guano lying or being in or upon Cochon and Kidney. Islands and all penguin guano there found to get raise convert make merchantable and fit for sale and carry away for their own use And also liberty and power for the purposes aforesaid to erect construct and maintain such buildings jetties and other works as may be considered requisite TO HOLD the said licences liberties and powers hereby granted and demised unto the Lessees from the day of 19 for the term of 21 years YIELDING AND PAYING therefor the rents and royalties hereinafter mentioned and covenanted to be paid by the Lessees.

AND the Lessees do hereby for themselves and their permitted assigns covenant with the Governor in manner following that is to say:-

1. THE Lessees shall not assign or underlet the licence liberties and powers hereby demised or any part thereof or part with possession of any land occupied for any of the purposes of this demise to any other person persons or Company without the previous consent in writing of the Governor who may (without prejudice to his right to refuse such consent on any other ground) require as a condition of giving such consent the assignee or assignees or underlessee or underlessees at his or their expense to execute a deed of covenant to observe and perform the covenants and conditions on the part of the Lessees in these presents contained or such other document as the Governor may require for rendering such assignee or assignees or underlessee or underlessees liable to observe and perform the said covenants and conditions in like manner as though he or they had been parties to these presents in place of the Lessees or as nearly so as circumstances will admit.

2. THE Lessees shall at all times be and remain British subjects or a British Company registered in Great Britain or a British Colony and having its principal place of business within His Majesty's dominions, the Chairman and the Managing Directors (if any) and a majority of the other Directors of which shall at all times be British subjects, and neither the Lessees nor the licences liberties and powers hereby demised nor any land occupied by the Lessees for the purposes of this demise shall at any time be or become directly or indirectly controlled or managed by foreigners or a foreigner or any foreign corporation or corporations and the local General Manager of the Lessees and not less than 50 per cent of the local staff other than workmen employed by them shall at all time be British subjects.

IN this Clause the expression "foreigner" means any person who is not a British subject and the expression "foreign corporation" means any corporation other than a

corporation established under and subject to the laws of some part of His Majesty's dominions and having its principal place of business in those dominions.

ANY alteration in the Memorandum or Articles of Association or in the constitution of the Lessees shall be reported to the Governor provided that two months' previous notice of the intention to make any alteration which might conceivably affect the British character of the Lessees shall be given in writing to the Governor who if in his opinion the said alteration shall be contrary to the cardinal principle of this Deed that the Lessees shall be and remain British subjects or a British Company under British control may refuse his consent to such alteration.

THE constitution or the Memorandum and Articles of Association of the Lessees shall embody such of the provisions in this Clause before contained as the Governor may require.

IF and whenever any alteration of which two months' notice in writing has to be given to the Governor as aforesaid is made in the Memorandum or Articles of Association or in the constitution of the Lessees without the written consent of the Governor or if and whenever there shall be any failure to comply with any of the provisions in this Clause before contained the Lessees shall be deemed to have committed a breach of the covenants and conditions contained in this Lease and by them to be observed and performed.

3. THE Lessees will during the said term pay to the Governor the rents and royalties following that is to say:-

(a) A yearly rent of £10.

(b) A royalty equal to the sum of £5 per cent upon the gross profits of the Lessees during the then last preceding year but such last mentioned sum shall not be less than a sum equal to the payment of One shilling nor more than a sum equal to the payment of Two shillings and six pence

per ton of guano rendered merchantable and fit for export during the then last preceding year.

PROVIDED ALWAYS that from and after the expiration of two years from the date hereof the minimum Rent and royalty payable under this sub-clause shall not be less than the sum of £100. The said rent and royalty to be payable without any deduction yearly on the 1st day of January in every year and the first payment thereof to be made on the 1st day of January 191 . For the purposes of this sub-clause the expression "gross profits" shall mean the gross receipts of the Lessees from this undertaking less the working expenses which shall include only light fuel stores wages of workmen repairs and maintenance rent insurance and legal expenses together with management expenses not exceeding a sum equal to 15 per cent of the gross receipts from this undertaking during the then last preceding year.

THAT the Lessees will during the continuance of the said term supply farmers and others residing in the Falkland Islands with penguin guano which has been rendered merchantable and fit for export at a price not exceeding £5 per ton.

5. THAT the Lessees will keep true and proper books of account containing entries with dates prices and all other proper particulars of all guano gotten rendered merchantable and fit for export and sold or disposed of by the Lessees and all such other entries as may be requisite to enable the royalties payable hereunder to be calculated and will permit the Governor or any person authorised by him at all times to inspect such books of account and take copies thereof or extracts therefrom and will whenever required by the Governor make and transmit to him such true copies of or extracts from the said books as he may require.

6. THAT the Lessees will cause such books of account to be made up yearly as on the 31st day of December in every

year and to be audited in the month of February in every year by some Chartered Accountant to be approved of in writing from time to time by the Governor and will forthwith after the same shall have been so audited submit to the Governor a statement certified by such Chartered Accountant showing the respective amounts of guano gotten rendered merchantable and fit for export and sold or disposed of during the year and any other particulars requisite for the calculation of the said royalties and will also furnish to the Governor all such other certificates and vouchers as he may from time to time require either in addition to or in substitution for such certified statement for the purposes of calculating the royalties payable in respect of each year.

7. THAT the Lessees will not in the exercise of the powers and liberties aforesaid do or permit or suffer to be done anything which may in any way injure or endanger the existence of the flora or fauna of the said Islands and will not disturb any sea birds during the breeding season and will not disturb take or kill any game wildfowl rabbits or fish in or upon the said Islands.

8. THAT the Lessees will if required by the Governor so to do and within 12 calendar months after being so required erect and during the continuance of this Lease maintain for the purpose of landmarks to be visible to vessels approaching or passing near the said Islands a substantial column or beacon of not less than ten feet square at the base and not less than twenty feet high and that it shall be lawful for the Commanding Officer of any vessel in His Majesty's Service to inspect the same and if dis-satisfied with the mode in which or the place at which any such column or beacon shall have been erected to require the Lessees to alter its mode of construction or to remove and erect it upon some other part of the Islands and that the Lessees will forthwith comply with any such requirement.

9. THAT the Lessees will not hinder or interfere with the exercise of the rights of any person who may establish to the satisfaction of the Governor that he has any rights of whatsoever nature over the said Islands or either of them or any part or parts thereof

A N D IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:-

10. THAT the Lessees paying the rents and royalties hereby reserved and made payable and performing and observing the covenants on their part and conditions herein contained shall during the period of two years from the date hereof have the prior right licence and liberty to prospect for penguin guano in any of the said Islands under the control of the Government of the Falkland Islands and within the said period of two years to take a lease of the right to work the guano in or under any area or areas not exceeding in the whole four square miles for the term of 21 years and at the rent and royalties hereinbefore mentioned.

11. THAT if the Lessees shall after a full and sufficient trial prove to the satisfaction of the Governor that the guano the right to work which is hereby granted and demised cannot by reason either of its quantity or quality be worked at a commercial profit it shall be lawful for the Lessees to determine this present demise at the end of any year of the term hereby granted by giving to the Governor not less than two years previous notice in writing of the intention so to do but such determination shall be without prejudice to any right of action or remedy which shall have accrued to the Governor in respect of any breach of any of the covenants or provisions herein contained.

12. IF any rent or royalties payable hereunder shall be in arrear for three calendar months after the same shall have become payable or if any of the covenants on the part of the

Lessees shall be broken or left unfulfilled or if the Lessees shall fail to satisfy the Governor that they have by the 30th day of June 1916 made reasonable progress in working the guano the right to work which is hereby granted and demised or if the Lessees shall fail or cease for any consecutive period of 12 calendar months to work the same then and in any of such cases it shall be lawful for the Governor by notice in writing given or sent by post to the Lessees at their last known place of abode or business of the Lessees to determine these presents on a day to be named in such notice and thereupon these presents and the grant and demise hereby made shall be determined on such day without prejudice to any right of action or remedy which shall have accrued to the Governor in respect of any breach of any of the covenants or provisions herein contained.

13. ON the expiration or sooner determination of this Lease all property machinery plant and works placed or erected hereunder on either of the said Islands by the Lessees and not previously removed by the Lessees shall become and remain the absolute property of His Majesty and his successors.

AND the Governor for and on behalf of the Government but not so as to impose any personal liability on himself or on any member servant or officer of the Government personally hereby covenants with the Lessees that the Lessees paying the rents and royalties hereby reserved and made payable and performing and observing all the covenants stipulations and provisions herein contained and on the part of the Lessees to be performed and observed shall quietly hold and enjoy the licences liberties and powers hereby granted and demised for and during the term hereby granted without any interruption from or by the Government or any person or persons claiming under it PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the Government shall not be bound to maintain any establishment

or Officer on either of the said Islands or be in any wise responsible for any loss which the Lessees may suffer by reason of the absence thereof.

14. ANY and every dispute difference or question which may at any time arise between the Governor on the one hand and the Lessees or any person persons or corporation claiming through or under the Lessees on the other hand touching the construction meaning and effect of these presents or of any Award made in pursuance hereof or any Clause or thing contained herein or in any such Award as aforesaid or the rights or liabilities of the Governor or the Lessees or any such person or corporation as aforesaid shall be referred to the sole arbitration of such person as shall be nominated by His Majesty's Principal Secretary of State for the time being for the Colonies for that purpose and this shall be deemed to be a submission to arbitration within the meaning of the Imperia Act of Parliament known as the Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force and the provisions of every such act shall apply to every arbitration under this Clause.

SIGNED SEALED AND DELIVERED by the above-named Reginald Laurence Antrobus Maurice Alexander Cameron and William Hepworth Mercer in the presence of

R. L. Antrobus (L.S.)
M. A. Cameron (L.S.)
W. H. Mercer (L.S.)

Herbert B. Rendall
3 Gt Winchester St
London E.C. Solr

SIGNED SEALED AND DELIVERED by the above-named William Birmingham Newton in the presence of

William Birmingham Newton (L.S.)

Harold M. Ommanney
3 & 4 Great Winchester Street
London E.C.
Solicitor

DATED 27th October 1915

FAIKLAND ISLANDS

Agreement

with

DR. WILLIAM BIRMINGHAM NEWTON for a Lease of certain rights to work for Guano.