GP 1612



COLONY AND PROTECTORATE OF KENYA.

ORDINANCES

ENACTED DURING THE YEAR

1930

VOL. IX (NEW SERIES)

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TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION.

FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1930.

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1930
Revised Edition Chap. 1	Interpretation and General Clauses ..	Amends Section 2(40) and (41). Repeals Section 25. Adds Section regarding Amendment of Designations used in Ordinances, etc. ..	16
,, 5	Courts	Amends Section 2. Adds Section regarding Jurisdiction of Magistrates of Subordinate Courts	2
,, 7	Criminal Procedure	Repeals and replaces Section 167	15
,, 7	Criminal Procedure	Repealed	11
,, 18	Arbitration	Makes provision for Execution of Arbitral Awards. Amends Section 22	34
,, 22	Bills of Sale	Repealed	24
,, 34	Widows' and Orphans' Pension	Amends Section 27	4
,, 36	Police	Repealed	64
,, 37	Prisons	Repealed	37
,, 38	Identification of Prisoners	Repealed..	64
,, 40	King's African Rifles	Repealed..	31
,, 50	Customs Tariff	Repealed..	1
,, 54	Dangerous Petroleum Tax	Adds Section regarding Repayment of Tax to Imperial Airways, Ltd., in certain cases	57
,, 56	Merchant Shipping Fees	Repealed..	51
,, 62	Immigration Restriction	Amends Sections 4(*b*), (*d*), (*f*), 12, 16, and 19. Repeals and replaces Sections 5(*h*), 8, 9(2), 11, 21(*a*), (*b*), 37 and Schedules A, B and C. Repeals Section 6(2). Adds Section regarding Conditional Permits ..	20
,, 62	Immigration Restriction	Amends Sections 6 and 16	44
,, 63	Vagrancy	Repeals and replaces Sections 4 and 6. Repeals Section 9. Amends Sections 10 and 11	21

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Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1930
Revised Edition			
Chap. 65	Uniforms	Repealed	10
„ 71	Liquor	Adds Section regarding Recovery of Debts	52
„ 77	Collective Punishment	Repealed	54
„ 78	Criminal Law Amendment	Repealed	10
„ 82	Townships	Repealed	63
„ 83	Townships Fees and Conservancy	Repealed	63
„ 89	Registration of Trade Marks	Repealed	35
„ 104	Brokers	Repealed	56
„ 116	Rivers	Repealed	59
„ 118	Wireless Telegraphy	Amends Section 2	14
„ 129	Native Authority	Adds Section regarding Power to Establish Local Communal Councils	29
„ 133	Native Liquor	Repealed	36
„ 134	Sugar	Adds Sections regarding Restriction on Supplying Sugar or Sugar Juice in Prohibited Area, and Rewards to Informers	8
„ 139	Employment of Natives	Repeals Section 63(2)	51
„ 140	Crown Lands	Repeals Part VI	9
„ 147	Land Surveyors	Repeals and replaces Sections 8 and 10. Amends Section 9 and Schedule	60
„ 150	Wattle Bark Industry	Repealed	28
„ 157	Diseases of Animals	Amends Section 3(1)	61
„ 165	Electric Power	Amends Sections 19 and 44. Repeals and replaces Section 39	19
7 of 1925	Public Trustee's	Amends Sections 4 and 5	3

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—(*Continued*).

FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1930.

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1930
24 of 1925	Shop Hours	Adds Sections regarding Exclusion of Certain Trades and Businesses from the Operation of the Ordinance, and Closing of Shops in Native Areas. Amends Second Schedule	40
25 of 1925	Detention Camps	Repeals and replaces Sections 5, 6 and 7. Adds Section regarding Period of Detention. Repeals Section 13 and Schedule	18
1 of 1926	Bankruptcy	Repealed..	32
14 of 1926	Costs in Criminal Cases	Repealed..	11
1 of 1928	Kerosene Oil (Repayment of Duty) ..	Repealed..	58
12 of 1928	Defence Force	Repeals and replaces Sections 4 and 23(2)..	17
19 of 1928	Local Government (Municipalities) ..	Amends Section 52	50
20 of 1928	Local Government (Rating)	Amends Sections 5 and 26. Adds Section regarding Tenants in Common and Jurisdiction of Magistrates of the First Class	13
20 of 1928	Local Government (Rating) ..	Adds Sections regarding Finality of Notice Fixing Mombasa Rate for 1929; Finality of Rate for 1929; Mombasa Valuation Roll Declared Final and Binding	25
21 of 1928	Local Government (District Councils)..	Repeals and replaces Section 6(1)(*c*). Amends Sections 26, 60 and 61. Adds Sections regarding Powers of Provincial Commissioner or District Commissioner where there is no District Council, and Orders to have the effect of By-laws	7
24 of 1928	Trout Protection	Repeals and replaces Section 10	27
26 of 1928	Traffic	Amends Sections 13, 19, 22, 24, 28, 29, 41, 48 and Schedule. Adds Section regarding Public Service Vehicles	62
32 of 1928	Public Health (Division of Lands) ..	Amends Sections 6, 9 and 12	47
33 of 1928	Harbours Regulation	Repeals Section 40. Amends Section 49	5

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—(*Continued*).

FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1930.

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1930
13 of 1929	Explosives	Adds Section regarding Appeal	26
10 of 1930	Penal Code	Adds Sections regarding False Information to Public Servants; Indecent Assault on Boys under Fourteen; Indecent Practices between Males; Killing Unborn Child; Fraudulent Disposition of Mortgaged Goods; False Declaration for Passport. Amends Section 123	45
11 of 1930	Criminal Procedure Code	Repeals and replaces Sections 118(1), (2), and 277. Amends Sections 121, 184, 185, 190, 193, 344 and First Schedule. Adds Section regarding Discharge of Accused Person when no Case to Answer	46
24 of 1930	Chattels Transfer	Adds Section regarding Stamp Duty Payable	41
Applied Acts			
1878	Bills of Sale Act	Repealed as applied to the Colony	24
1882	Bills of Sale Act	Repealed as applied to the Colony	24
—	Indian Penal Code..	Repealed as applied to the Colony	10
1872	Indian Contract Act	Repeals Chap. VIII as applied to the Colony	33

COLONY AND PROTECTORATE OF KENYA.

No. 1 of 1930.

[17th April, 1930.] Date of assent.

An Ordinance to Consolidate and Amend the Law relating to Customs Tariffs.

17th April, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Customs Tariff Ordinance, 1930," and shall come into operation on the 17th day of April, 1930. Short title and commencement.

2. Subject to the exemptions and to any suspensions, rebates and conditions permitted or provided for by or under the authority of this Ordinance and subject also to the provisions of any law relating to the management of Customs, there shall be charged, levied, collected and paid for the benefit of the general revenue of the Colony, Customs duties in respect of goods imported into the Colony at the rates set forth in the Schedule hereto. Customs duties leviable.

3. The Governor with the approval of the Legislative Council may by Proclamation impose any duty (either in part or in full) referred to as a " suspended duty " in the Schedule to this Ordinance. Suspended duties.

4. For the purpose of assessing the amount of any *ad valorem* Customs duty and for the purpose of the declarations and oaths which may at any time be required by law or regulation in relation to any question of such duty, the value of goods for purposes of duty shall be taken to be the domestic value, as hereinafter defined, plus the extra cost of packing and packages for export, carriage to the port of shipment and all expenses incidental to placing the goods on board the ship, together with the cost of freight, insurance, and all other Value of goods for duty.

charges up to the time of importation into the Colony: Provided that in no case shall the value for purposes of duty be less than the cost of the goods to the importer at the place of importation.

For the purpose of this section, " domestic value " shall, in respect of imported goods, be the market price at which at the time of exportation such or similar goods are offered for sale, for consumption in the country from which the goods are imported, to all purchasers in the usual wholesale quantities in the ordinary course of trade in the principal markets of such country, including the cost of packages ordinarily used in those markets, but not including excise duties payable in that country.

Determination of value in special cases.

5. Whenever goods are imported into the Colony under such conditions as render it difficult to determine the value thereof inasmuch as—

(*a*) those goods are not sold for use or consumption in the country of origin or production; or

(*b*) a hiring of those goods or the right of using the same, but not the right of property therein, is sold or given; or

(*c*) those goods are usually or exclusively sold by or to agents or by subscription; or

(*d*) those goods are sold or imported in or under any other unusual or peculiar manner or conditions,

the Commissioner may determine the value of such goods for purposes of duty in accordance with the provisions of the Customs Management Ordinance, 1926.

No. 25 of 1926.

Reciprocal agreements.

No. 25 of 1926.

6. When any agreement has been made with the Government of any of the territories mentioned in section 263 of the Customs Management Ordinance, 1926, making the provision described in paragraph (2) of that section, the Governor shall notify the fact in the Gazette, and thereupon the following provisions shall have effect with respect to such territory :—

(1) No duty shall be collected upon goods imported from such territory if duty shall have previously been collected upon such goods in such territory at a rate

not lower than the rate prescribed as in force in the Colony at the time of the importation of such goods into such territory.

(2) When duty shall be collected after the date of commencement of this Ordinance upon the importation of goods into such territory at a rate lower than the rate prescribed in the Schedule to this Ordinance, together with such suspended duty as may be chargeable, in respect of the importation of such goods into the Colony, then, if such goods are subsequently removed from such territory into the Colony, duty shall be levied and collected to an amount equal to the difference between the sum payable to the Government of the Colony in respect of such goods under such agreement as aforesaid and the full duty payable under the Schedule to this Ordinance; together with such suspended duty as may be chargeable.

(3) (*a*) When duty shall have been collected under this Ordinance upon goods imported into the Colony and such goods shall have subsequently been removed into such other territory, then, if the duty, including the suspended duty, which has been collected in the Colony is greater than the amount payable upon the importation of such goods into such other territory, the Commissioner of Customs may refund to the person from whom such duty shall have been received an amount equal to the difference between the amount payable by the Government of the Colony under such agreement as aforesaid and the total duty collected in the Colony.

(*b*) This sub-section shall apply only in the case of goods which either have paid a specific import duty in the Colony, or, in the case of goods subject to an *ad valorem* duty, are removed into such other territory in packages unbroken since importation, and, in either event, are removed into such other territory within twelve months from the date upon which duty shall have been collected in the Colony.

Transfers between Kenya and Uganda. No. 25 of 1926.

7. Notwithstanding anything contained in the Customs Management Ordinance, 1926, the provisions contained in the preceding section shall apply to goods subject to the imposition of suspended duties passing between the Colony and the Uganda Protectorate.

Repeal. *Cap.* 50. No. 7 of 1926. No. 9 of 1927.

8. The Customs Tariff Ordinance (Chapter 50 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance No. 7 of 1926, and the Customs Tariff Ordinance No. 9 of 1927, are hereby repealed.

SCHEDULE.

CLASS I.—ANIMALS, AGRICULTURAL AND PASTORAL PRODUCTS, FOODSTUFFS.

Item	Article	Duty	Sh. cts.
1	Animals, living—		
	(*a*) Cattle for slaughter	Each	20 00
	(*b*) Sheep and goats for slaughter	Each	3 00
	(*c*) Other, including poultry	Free.	
2	Bacon and ham	*ad valorem* 20% (plus a suspended duty of 10% *ad valorem*).	
3	Biscuits	*ad valorem* 20%	
4	(*a*) Bones, ivory, hoofs, horns, skins, and teeth, being parts of animals, fishes and reptiles, not being manufactured, polished, dressed or further prepared than dried or cleaned, but in their raw and unmanufactured state	Free.	
	(*b*) Hog casings (sausage skins)	Free.	
	(*c*) Ornamental feathers, n.e.e.	*ad valorem* 20%	
5	Butter	*ad valorem* 20% (plus a suspended duty of 10% *ad valorem*).	
6	Cheese	*ad valorem* 20% (plus a suspended duty of 10% *ad valorem*).	
7	Corn, grain, and pulse (not including infants' foods, patent or proprietary foods, or corn, grain, or pulse prepared as vegetables):—		
	(*a*) Wheat—		
	(i) In the grain	per 100 pounds	3 00
	(ii) Ground or otherwise prepared	per 100 pounds (plus a suspended duty of Sh. 1·50 per 100 pounds).	3 00
	(iii) Bran, wheaten	*ad valorem* 20%	

CLASS I.—ANIMALS, AGRICULTURAL AND PASTORAL PRODUCTS, FOODSTUFFS—(*continued*).

Item	Article	Duty	Sh. cts.
7	Corn, etc.—(*contd.*)		
	(*b*) Rice—		
	(i) In the grain	per 100 pounds	4 00
	(ii) Otherwise prepared..	*ad valorem* 20%	
	(*c*) Maize—		
	(i) In the grain	Free (plus a suspended duty of 20% *ad valorem*).	
	(ii) Meal	Free (plus a suspended duty of 20% *ad valorem*).	
	(iii) Otherwise prepared..	*ad valorem* 20%	
	(*d*) Other corn and grain	*ad valorem* 20%	
	(*e*) Pulse—		
	(i) Dhall	per 100 pounds	4 00
	(ii) Other pulse, including meal and flour	*ad valorem* 20%	
8	Cotton, raw	Free.	
9	Extracts and essences of all kinds for food and flavouring ..	*ad valorem* 20%	
10	Fish—		
	(*a*) Fresh, of East Africa taking	Free.	
	(*b*) Fry and ova	Free.	
	(*c*) Salted, dried, or preserved by cold process	per 100 pounds .. .. (or 20% *ad valorem*, whichever is the greater).	2 00
	(*d*) Other	*ad valorem* 20%	
11	Foods—		
	(*a*) Specially prepared for infants, but not including virol, roboleine and similar tonic foods	*ad valorem* 10%	
	(*b*) Tonic and similar foods, *e.g.* ovaltine, roboleine, virol, and similar preparations, not being medicines ..	*ad valorem* 20%	
	(*c*) Cod liver oil and cod liver oil and malt extracts ..	*ad valorem* 10%	

CLASS 1.—ANIMALS, AGRICULTURAL AND PASTORAL PRODUCTS, FOODSTUFFS—(*continued*).

Item	Article	Duty	Sh. cts.
12	Fruits and vegetables—		
	(*a*) Fresh or green, n.e.e.	Free.	
	(*b*) Bottled, tinned, or otherwise preserved	*ad valorem* 20%	
	(*c*) Dates, imported in bulk	per 100 pounds	4 00
	(*d*) Other fruits and vegetables	*ad valorem* 20%	
13	Garlic	per 100 pounds	5 00
14	Ghee	per pound (plus a suspended duty of Cts. 15 per pound).	30
15	Hops, in bulk	*ad valorem* 10%	
16	Malt, condensed, and worts, for the brewing of beer	*ad valorem* 10%	
17	Milk—		
	(*a*) Condensed, desiccated, or preserved, n.e.e.	per 100 pounds	10 00
	(*b*) Cream	per pound	50
18	Onions, not preserved	per 100 pounds	3 00
19	Poultry grit and spice, bone meal and bone flour	Free.	
20	Rennet	Free.	
21	Salt—		
	(*a*) Rock or crushed rock salt	Free.	
	(*b*) Common, n.e e , imported in bulk	per 100 pounds	1 00
	(*c*) For curing or dairy purposes	Free.	
	(*d*) Other	*ad valorem* 20%	
22	Seeds, bulbs, plants, trees and tubers, for planting or sowing only	Free.	

CLASS I.—ANIMALS, AGRICULTURAL AND PASTORAL PRODUCTS, FOODSTUFFS—(*continued*).

Item	Article	Duty	Sh. cts.
23	Sugar—		
	(*a*) Jaggery	per 100 pounds (plus a suspended duty of Sh. 6 per 100 pounds).	6 00
	(*b*) Refined, imported in packages of more than 28 pounds net, but not including candy, cube, loaf, caster, or icing sugar	per 100 pounds (plus a suspended duty of Sh. 6 per 100 pounds).	6 00
	(*c*) Sugar, other	*ad valorem* 20%	
24	Tea	per pound	40

CLASS II—ALES, WINES, SPIRITS AND BEVERAGES.

Item	Article	Duty	Sh. cts.
25	Ale, beer, cider, perry and stout, all kinds, of a strength exceeding 3% of proof spirit	per Imperial gallon	2 50
26	Beverages, cordials and syrups, n.e.e., not exceeding 3% of proof spirit	*ad valorem* 20%	
27	Spirits—		
	(*a*) Perfumed	per Imperial gallon	60 00
	(*b*) Liqueurs, cordials and mixed potable spirits, exceeding 3% of proof spirit	per Imperial gallon	40 00
	(*c*) Other potable spirits exceeding 3% of proof spirit, *e.g.* brandy, whisky, rum, gin, geneva, and rectified spirits, n.e.e. (*Note.*—No allowance will be made for underproof in excess of 12½%).	per proof gallon	40 00

CLASS II.—ALES, WINES, SPIRITS AND BEVERAGES—*(continued)*.

Item	Article	Duty	
			Sh. cts.
27	Spirits—*(contd.)*		
	(*d*) Methylated and denatured spirits, not potable, and not including power alcohol	per Imperial gallon	2 00
	(*e*) Power alcohol, not potable	per Imperial gallon	30
	(*f*) Toilet preparations, essences and tinctures, n.e.e., containing over 3% of proof spirit, but not including tooth washes and dentifrices	*ad valorem* 30%	
	(*g*) Wood naphtha, pyridine and similar denaturants	Free.	
	(*h*) Spirituous tooth washes and dentifrices	*ad valorem* 20%	
	(*i*) Rectified spirits to be used solely in the compounding of drugs and medicines	Free.	
28	Waters, mineral, aerated and table—		
	(*a*) In bottles, each not more than one reputed half pint	per dozen bottles	75
	(*b*) In bottles each more than one reputed half-pint and not more than one reputed pint	per dozen bottles	1 50
	(*c*) In bottles, each more than one reputed pint and not more than one reputed quart	per dozen bottles	3 00
	(*d*) In other containers or larger bottles	per Imperial gallon	1 50
29	Wines—		
	(*a*) Vermouth	per Imperial gallon	4 50
	(*b*) Other still wines, n.e.e.—		
	(i) Imported in bottle	per Imperial gallon (or 30% *ad valorem*, whichever is the greater).	4 50
	(ii) Imported in casks or other containers of 5 gallons or over	per Imperial gallon (or 30% *ad valorem*, whichever is the greater).	2 50
	(*c*) Sparkling wines—		
	(i) Champagne	per Imperial gallon (or 30% *ad valorem*, whichever is the greater).	12 50

CLASS II.—ALES, WINES, SPIRITS AND BEVERAGES—*(continued)*.

Item	Article	Duty
		Sh. cts.
29	Wines—*(contd.)*	
	(ii) Other	per Imperial gallon .. 10 00 (or 30% *ad valorem*, whichever is the greater).
	(d) Sacramental wine, on proof to the satisfaction of the Commissioner of Customs that it is imported for use as such	Free.
	(*Note.*—Wines containing less than 3% of proof spirits are not included in the above and wines containing more than 50% of proof spirit are classed as spirits.)	

CLASS III.—TOBACCO AND MANUFACTURES THEREOF.

Item	Article	Duty
		Sh. cts.
30	Cigars, cheroots and cigarillos	per pound .. .. 5 00 (or *ad valorem* 62½%, whichever is the greater).
31	Cigarettes	per pound .. .. 2 40 (or *ad valorem* 62½ %, whichever is the greater).
32	Snuff	per pound 1 50
33	Tobacco, manufactured, n.e.e.	per pound .. .. 2 40 (or *ad valorem* 62½%, whichever is the greater).
34	Tobacco, unmanufactured	per pound 1 00

CLASS IV.—TEXTILES, APPAREL, YARNS AND FIBRES.

Item	Article	Duty
		Sh cts.
35	Bags and bagging (not including paper or leather bags), and hessian and sacking in the piece (not including matting), for the packing for wholesale distribution or export of local produce or manufactures	Free.
36	Bands and belting for driving machinery	Free.
37	Battery cloth and baize, bolting cloth, gauze, matting, sieving and screening for use in connexion with machinery; brattice cloth, filter cloth and mill silk	Free.
38	Clothing, apparel, and blankets, second-hand (reconditioned or otherwise), for sale	*ad valorem* 30%
39	Coco-nut and fibre matting in the roll, not being mats or interior floor coverings	*ad valorem* 10%
40	Cotton piece goods, grey, unbleached, imported in the piece	per pound gross weight, including the packing 30 (or 20% *ad valorem*, whichever is the greater).
41	Dressings, surgical, imported as such	Free.
42	Nets and netting (not wire)—	
	(*a*) Fishing nets (not including anglers' landing nets) ..	Free.
	(*b*) Fruit-tree and seed-bed netting	Free.
	(*c*) Nets for use in games and sports	*ad valorem* 10%
	(*d*) Mosquito nets and netting	Free.
43	Rope and cordage—	
	(*a*) Driving ropes for machinery	Free.
	(*b*) Baling rope, for the packing of produce	Free.
	(*c*) Seaming and binder twine; harvest yarn	Free

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES.

Item	Article	Duty
44	Airships, aeroplanes and other aircraft, and parts and accessories thereof, but not including batteries, magnetos, ignition coils, sparking plugs, and rubber tyres and tubes, imported separately	Free.
45	Bolts, nuts, nails, screws, rivets, hinges, dogspikes, and washers	*ad valorem* 10%
46	Buckets, dustbins, incinerators, destructors and similar appliances and apparatus, imported for public services in connexion with the collection and disposal of refuse	Free.
47	Builders' requisites and materials (metal)—	
	(*a*) Buildings, complete, imported in sections	*ad valorem* 10%
	(*b*) Metal windows, doors and house frames	*ad valorem* 10%
	(*c*) Gutterings, ridgings, ventilators	*ad valorem* 10%
	(*d*) Casement stays, door handles, door closers, finger plates, latches, rim and mortice locks and lock furniture, and similar door and window furniture, but not including padlocks	*ad valorem* 10%
	(*e*) Sanitary and lavatory appliances (metal): lavatories, sinks, water-closets, baths, geysers, cisterns, and taps, plugs, traps, overflows and other fittings therefor	*ad valorem* 10%
	(*f*) Lifts, passenger, including the gates	*ad valorem* 10%
	(*g*) Concrete reinforcing metal; expanded metal	*ad valorem* 10%
48	Bullion in the bar or sheet; coin and specie	Free.
49	Carts, carriages and wheeled vehicles, not self-propelled—	
	(*a*) Agricultural wagons, carts and trailers, and parts thereof	Free.
	(*b*) Wheelbarrows, sack-trucks, and hand-trolleys	Free.
	(*c*) Tar and pitch boilers, street-spraying machines, and similar vehicles ordinarily employed in the construction and maintenance of roads	Free.

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—(*continued*).

Item	Article	Duty
49	Carts, etc.—(*contd.*) (*d*) Carts and trailers, imported for public services in connexion with the collection and disposal of refuse ..	Free.
	(*e*) Bicycles, tricycles, rickshas and carriages (not including baby carriages), and parts and accessories thereof (not including rubber tyres or tubes when imported separately)	*ad valorem* 15%
	(*f*) Other wheeled vehicles, n.e.e., and parts and accessories thereof (not including rubber tyres or tubes when imported separately)	*ad valorem* 10%
50	Chains: trek, hauling or hoisting chains, and shackles therefor, not including anti-skid chains for motor and steam vehicles	Free.
51	Cranes, hoists, winches, chain pulleys, bucket and gravity conveyors and completed parts thereof, including slings ..	Free.
52	Cylinders for use, or in use, as containers for compressed gas, not being parts of gas lighting apparatus	Free.
53	Fencing material: gates, hurdles, posts, standards, strainers, staples, winders, and other materials or fasteners ordinarily used for agricultural or railway fencing	Free
54	Filters, not being parts of motor vehicles, for the purification or softening of water, or for use in connexion with machinery for manufacturing or industrial purposes	Free
55	Fire escapes, fire engines and fire extinguishing apparatus, and parts and refills therefor	Free.
56	Gauze, metal; sieving and screening of metal for use in connexion with machinery	Free

CLASS V—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—*(continued)*.

Item	Article	Duty
57	Machinery, apparatus, appliances and implements (not specially provided for, and not including material, domestic machines or vehicles)—	
	(*a*) For agricultural, dairying or water-boring purposes ..	Free.
	(*b*) For mining purposes, n.e.e.	Free.
	(*c*) Fixed plant and machinery for factory installation and for manufacturing and industrial purposes, but not including structural steelwork for staging and platforms	Free.
	(*d*) Presses for produce, and parts thereof	Free.
	(*e*) Pumps and rams for water supply, sewerage, drainage or irrigation	Free.
	(*f*) Lawn mowers, garden shears, garden and path rollers, watering cans and similar horticultural and gardening requisites	*ad valorem* 10%
	(*g*) Mechanics' and artisans' tools, being tools ordinarily used by mechanics or artisans, and not being agricultural implements or machine tools	*ad valorem* 10%
	(*h*) Machinery, apparatus, appliances and instruments (not including tools, or domestic or toilet machines, or appliances elsewhere provided for) and electrical material used in connexion therewith, for the generation, storage, transmission, distribution of, or lighting by, gas or electric power, and parts thereof, but not including electroliers, gasoliers, lamps, lamp-shades or reflectors, portable batteries or electrical appliances for use in connexion with vehicles	Free.
	(*i*) Other, for manufacturing or industrial purposes, including machine tools, but not including structural steelwork for staging and platforms	Free.

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—(*continued*).

Item	Article	Duty
58	Metals—	
	(*a*) Aluminium, in plain, perforated or corrugated sheets, or in strips, but otherwise unmanufactured	*ad valorem* 10%
	(*b*) Brass, bronze, copper and composition metal, in plain or perforated sheets or in strips, but otherwise unmanufactured	*ad valorem* 10%
	(*c*) Iron and steel—	
	(i) Plates and sheets, plain, corrugated, perforated, galvanised or enamelled, including plates covered with lead, tin or zinc, n.e.e.	*ad valorem* 10%
	(ii) Angle, bar, channel, rod, hoop, H., T., and similar iron and steel, not worked or fabricated and not elsewhere enumerated..	*ad valorem* 10%
	(iii) Fabricated girders and fabricated steelwork for buildings and bridges not elsewhere enumerated, structural steel-work for staging and platforms.. ..	*ad valorem* 10%
	(iv) Hoop iron for the baling of produce, and fasteners therefor..	Free.
	(*d*) Lead: bar, sheet and strip	*ad valorem* 10%
	(*e*) Tin and zinc: plate, n.e.e., bar, sheet, plain or perforated but otherwise unmanufactured..	*ad valorem* 10%
	(*f*) Zinc: fume, dust and shavings	Free.
	(*g*) Mercury and its compounds	Free.
	(*h*) Metals of all sorts, n.e.e., including brazing and soldering alloys, in rods, bars, blocks, ingots or pigs	*ad valorem* 10%
	(*i*) Metalliferous ores	Free.
	(*j*) Linotype metal	Free.
	(*k*) Foil: lead, tin or aluminium foil for the packing of locally manufactured goods	Free.
59	Metal signs or name plates bearing any commercial advertisement or the name and qualifications or professional attainments of the importer	Free.

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—*(continued)*.

Item	Article	Duty
60	Memorial tablets and brasses, engraved; ornaments for graves	Free.
61	(*a*) Motor cars, motor and steam lorries of a carrying capacity of less than 30cwt., motor cycles and other mechanically propelled road vehicles, and chassis thereof, n.e.e., together with their appropriate initial equipment ..	*ad valorem* 10%
	(*b*) Motor and steam lorries of a carrying capacity of 30 cwt. and over, and chassis thereof, n.e.e., together with their appropriate initial equipment	Free.
62	Motor and steam road and farm tractors; stone crushers, road rollers, graders, and scarifiers, road sweepers and sprayers and other mechanically propelled engines, machines and vehicles ordinarily employed in the construction and maintenance of roads; motor ambulances; parts and accessories therefor, but not including lamps, bulbs, batteries, magnetos, ignition coils, sparking plugs, and rubber tyres and tubes, when imported separately	Free.
63	Motor vehicle and motor engine parts and accessories, not specially provided for	*ad valorem* 10%
64	Packing and lagging for engines, machinery, piping and buildings, n.e.e.	*ad valorem* 10%
65	Pickaxes, crowbars, shovels, earth-pans, axes and hatchets, n.e.e.	*ad valorem* 10%
66	Pipes, piping, tubes and fittings (metal)—	
	(*a*) For gas, steam, drainage, water supply, sewerage, irrigation, or in manufacturing or industrial plant, not including down-pipes or guttering, but including meters, culverts, cocks, taps, grids, manhole covers and fittings	Free.
	(*b*) Down pipes, chimney pipes, n.e.e	*ad valorem* 10%
	(*c*) Lead piping, not elsewhere provided for	*ad valorem* 10%

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—(*continued*).

Item	Article	Duty
		Sh. cts.
67	Printers' type, of metal, and electros	Free.
68	Railway and tramway construction and equipment requisites: rails, sleepers, fastenings for rails and sleepers, switchboxes, culvert tops, locomotives and other rolling stock, turntables, signals, weighbridges, and similar railway and tramway equipment requisites, n.e.e.	Free.
69	Refrigerating machinery, and mechanically cooled refrigerators	Free.
70	Sprayers, sprinklers, vermin traps and other apparatus and appliances used for the prevention or destruction of pests, or of diseases in stock, plants or trees	Free.
71	Tanks, complete or in sections—	
	(*a*) Imported for use in connexion with a public water supply system	Free.
	(*b*) Other, not elsewhere provided for	*ad valorem* 10%
72	Telegraphic and telephonic materials, equipment and instruments for the construction, working and maintenance of telegraph or telephone lines, or for the transmission or reception of wireless telegraphy or telephony, but not including stationery, or electric batteries suitable for use in motor vehicles ..	Free.
73	Weighing and measuring machines and appliances, not elsewhere provided for, including petrol and oil pumps	*ad valorem* 10%
74	Wire—	
	(*a*) Wire ordinarily used for native adornment—	
	(i) Iron	per 100 pounds 7 00
	(ii) Brass	per 100 pounds 20 00
	(iii) Copper	per 100 pounds 25 00
	(iv) Aluminium	per 100 pounds 25 00

CLASS V.—METALS, METAL MANUFACTURES, MACHINERY AND VEHICLES—*(continued)*.

Item	Article	Duty
74	Wire—*(contd.)*	
	(*b*) Steel wire and lead wire, n.e.e.	*ad valorem* 10%
	(*c*) Gauze and wire netting	Free.
	(*d*) Fencing and baling wire	Free.
75	Wire rope, and split links, shackles and thimbles for use in connexion therewith	Free.

CLASS VI.—MINERALS, EARTHENWARE AND GLASSWARE.

Item	Article	Duty
		Sh. cts.
76	Asbestos and asbestos cement manufactures, namely sheets, plain or corrugated, slates, tiles, ridging and guttering, asbestos washers and gaskets, and asbestos packing ..	*ad valorem* 10%
77	Asphalt and bitumen in bulk	Free.
78	Bottles and jars, common, of glass or earthenware, empty, and syphons ordinarily used for aerated waters, not including sparklet and similar syphons	Free.
79	Bricks, slates and tiles for building purposes	*ad valorem* 10%
80	Cement—	
	(*a*) Portland and similar cement for building purposes ..	per 400 pounds 1 50
	(*b*) Cement clinker	*ad valorem* 10%
	(*c*) Pudlo, ironite, cementone and similar substances for proofing, hardening or colouring cement	*ad valorem* 10%
	(*d*) Plaster of paris, in bulk	*ad valorem* 10%
	(*e*) Putty	*ad valorem* 10%

CLASS VI.—MINERALS, EARTHENWARE AND GLASSWARE - (*continued*).

Item	Article	Duty
		Sh. cts
81	Coal, coke and patent fuel	Free.
82	Crucibles, cupels, cupelling furnaces, ingot moulds, and furnaces for roasting minerals	Free.
83	Emery, corundum, carborundum, and similar abrasives, in bulk or the form of cloth, paper, stones, or wheels; sand-, glass- and flint-paper; grindstones and scythe-stones ..	*ad valorem* 10%
84	Filters	Free.
85	Firebricks, fireclay, fire cement and furnace cement, not being component parts of a furnace or boiler installation imported complete or in sections	*ad valorem* 10%
86	Talc powder, in bulk, not being a toilet preparation	*ad valorem* 10%
87	Glass—	
	(*a*) Illuminated windows imported by or for presentation to any religious body	Free.
	(*b*) Polished plate, not silvered or bevelled	per square foot 30
	(*c*) Sheet (plain, clear)	per 100 square feet .. 2 00
	(*d*) Other	*ad valorem* 20%
88	Glassware, china ware and porcelain ware—	
	(*a*) For laboratory use or scientific purposes	Free.
	(*b*) Lenses, optically ground, for spectacles	Free.
	(*c*) Other, n.e.e.	*ad valorem* 20%
89	Graphite or plumbago	*ad valorem* 10%

CLASS VI.—MINERALS, EARTHENWARE AND GLASSWARE—(*continued*).

Item	Article	Duty
90	Marble or other stone— (*a*) In the rough, or sawn .. .. (*b*) Tombstones and memorials for graves, engraved with a commemorative inscription to a deceased person ..	*ad valorem* 10% Free.
91	Pipes, piping and tubes, of earthenware, for drainage, irrigation, sewerage, water supply or water pumping, or for use in manufacturing or industrial plant	Free.
92	Sanitary earthenware, stoneware, or porcelain ware: baths, lavatory basins, cisterns, water-closets, urinals, and sinks, but not including portable toilet ware	*ad valorem* 10%

CLASS VII.—OILS, WAXES, RESINS, PAINTS AND VARNISHES.

Item	Article	Duty
		Sh. cts.
93	Ambergris, in the rough	*ad valorem* 50%
94	Belt dressing	*ad valorem* 10%
95	Grease, axle and lubricating	*ad valorem* 10%
96	Motor spirit, and products ordinarily used as such: benzine, benzoline, naphtha (non-potable), n.e.e., gasoline, petrol, and petroleum, shale and coal tar spirit generally, but not including power paraffin or kerosene	per Imperial gallon at 62°F 30
97	Oils, essential (natural or synthetic), and perfumed, not being medicinal, or for use as food or flavouring	*ad valorem* 30%

CLASS VII.—OILS, WAXES, RESINS, PAINTS AND VARNISHES—(*continued*).

Item	Article	Duty
		Sh. cts.
98	**Oils, heavy,** in bulk, for road or pavement construction ..	Free.
99	**Oils, mineral—**	
	(*a*) Crude or residual oil, not suitable for purposes of illumination, in bulk	Free.
	(*b*) Oil, kerosene, and power paraffin	per Imperial gall. at 62 F. 20
100	Oil, transformer	Free.
101	**Oils,** tar and creosote, in bulk, including s lignum and similar substances for the preservation of wood, not including wood-preserving ornamental stains	Free.
102	**Oils, n.e.e.,** not including edible oils	*ad valorem* 10%
103	**Paints,** colours, varnishes and driers: distemper, red and white lead, enamels, cellulose and similar paints, japan, berlin or brunswick black, lamp black, whiting, liquid size, shellac, french polish, wood stains, lacquer, linseed and hempseed oil, terebine, turpentine and turpentine substitutes	*ad valorem* 10%
104	Soap of all kinds, soap powders and extracts	per 100 pounds .. .. 5 00 (or 20% *ad valorem*, whichever is the greater).
105	**Tar** and pitch, in bulk	Free.

CLASS VIII.—DRUGS, CHEMICALS AND FERTILISERS.

Item	Article	Duty
106	Acetic and other acids, and similar preparations, for use as mediums for the disinfection or coagulation of fluid latex ..	Free.
107	Animal glands and tissues and their preparations, toxins and anti-toxins; lymph, sera and vaccines	Free.

CLASS VIII.—DRUGS, CHEMICALS AND FERTILISERS—(*continued*).

Item	Article	Duty
108	Boiler compositions and preparations for removing scale in boilers	*ad valorem* 10%
109	Disinfectants and germicides	Free.
110	Drugs, medicated dressings, medicinal preparations, and antiseptics	Free.
111	Dyes—	
	(*a*) Annatto	Free.
	(*b*) Microscopic stains for laboratory work	Free.
	(*c*) Hair dyes and similar toilet preparations	*ad valorem* 30%
	(*d*) Other	*ad valorem* 20%
112	Fertilisers and manures, animal, mineral or vegetable, artificial or natural	Free.
113	Gas, compressed, in cylinders—	
	(*a*) For medical use, or as an anaesthetic	Free.
	(*b*) Other	*ad valorem* 10%
114	Perfumery, cosmetics, and toilet preparations, n.e.e., but not including tooth powders, tooth pastes or tooth washes	*ad valorem* 30%
115	Potassium chlorate, cyanide and sulphocyanide, sodium cyanide and sulphocyanide, red phosphorus	Free.
116	Radium and radium compounds	Free.
117	Silicate of soda, caustic soda and caustic potash, litharge, saltpetre, and roll sulphur, in bulk	Free.
118	Sulphate of copper, arsenate and arsenite of soda, arsenate of lead, cyanogas, naphthalene, animal dips, insect sprays, and similar substances for the prevention or destruction of pests or for the prevention or cure of diseases in animals, plants, or trees	Free.

CLASS IX.—LEATHER AND RUBBER, AND MANUFACTURES THEREOF.

Item	Article	Duty.		
				Sh. cts.
119	Bands and belting of all kinds for driving machinery other than motor vehicles; belt lacing and belt fasteners	Free.		
120	Hose, transmission, all kinds	Free.		
121	Tyres and tubes, rubber, not attached to wheels or vehicles—			
	(*a*) Pneumatic—			
	(i) Tyres, including the weight of the immediate wrapper	per pound	.. ..	25
	(ii) Tubes for motor vehicles or for sidecars and trailers for motor vehicles	per pound	.. ..	20
	(iii) Tubes, bicycle and other	per pound	.. ..	25
	(*b*) Solid: complete, or in lengths, or in the piece	per pound	.. ..	10

CLASS X.—WOOD AND MANUFACTURES THEREOF.

Item	Article	Duty
122	Beehives and incubators and other wooden appliances for dairy and agricultural purposes only, and parts thereof	Free.
123	Boxes and casks, wooden, empty or in shooks, for the packing of oil, kerosene, or motor spirit, or of eggs, dairy produce, or other goods the product of manufactures or agriculture within the territory	Free.
124	Corkwood, unmanufactured, and cork floats for fishing nets..	Free.
125	Handles, wooden, for tools and implements	*ad valorem* 10%

CLASS X.—WOOD AND MANUFACTURES THEREOF—(*continued*).

Item	Article	Duty
126	Joinery: wooden framework of houses, window frames, sashes, casements, doors, lintels, and builders' mouldings	*ad valorem* 10% (plus a suspended duty of 20% *ad valorem*).
127	Plywood and pulp boards	*ad valorem* 10%
128	Vats and tanks, wooden, for use in industrial, agricultural or manufacturing operations	Free.
129	Wood and timber, unmanufactured—	
	(*a*) Teak, in the log, or hewn or sawn	*ad valorem* 10%
	(*b*) Other, n.e.e., including planed, smoothed, grooved or tongued	*ad valorem* 10% (plus a suspended duty of 20% *ad valorem*).

CLASS XI.—BOOKS, STATIONERY, PAPER AND PAPER MANUFACTURES.

Item	Article	Duty
		Sh. cts.
130	Atlases, charts, globes and maps—	Free.
131	Bags, paper—	
	(*a*) Multiple and waterproof bags for the packing for wholesale distribution, or export, of local produce or manutures; paper linings for bags for the packing of sugar manufactured within the territory	Free.
	(*b*) Other	*ad valorem* 20%
132	Banknotes and other paper currency, and postage stamps (used or unused)	Free.

CLASS XI.—BOOKS, STATIONERY, PAPER AND PAPER MANUFACTURES—(*continued*).

Item	Article	Duty
		Sh. cts.
133	Books, printed, and printed matter, namely: literature, periodicals and newspapers (other than periodicals and newspapers imported for packing purposes), guide books, directories, pamphlets, leaflets, catalogues and price lists, printed or lithographed religious texts, and music (other than roll music for autopianos); showcards, calendars and similar printed matter imported solely for advertising purposes	Free.
134	Cardboard boxes, cartons and discs, imported for the packing of local produce or manufactures	Free.
135	Cardboard, strawboard and millboard	*ad valorem* 10%
136	Cards, playing	per pack 70
137	Diagrams, plans and similar drawings	Free.
138	Inks and ink powders—	
	(*a*) For use in the printing industry, namely: printing and lithographic ink, printers' bronze powder, roller composition, stamping colours	*ad valorem* 10%
	(*b*) Stencil ink, solid	*ad valorem* 10%
	(*c*) Other	*ad valorem* 20%
139	Paper—	
	(*a*) Cigarette paper	*ad valorem* 30%
	(*b*) Printing paper, namely: newsprint in reels or in the flat, plain or composite paper, n.e.e., in reels of not less than 9 inches wide, or flat and folded, in the original mill ream wrapper, of a size not less than 16 inches by 15 inches	*ad valorem* 10%

CLASS XI.—BOOKS, STATIONERY, PAPER AND PAPER MANUFACTURES—(*continued*).

Item	Article	Duty
140	Pictures, paintings, engravings, etchings, picture books, and drawings, not elsewhere provided for, including photographic reproductions and enlargements—	
	(*a*) Imported solely for advertising purposes, and having an advertisement indelibly printed, engraved or lithographed thereon, but not including menu cards or similar advertising stationery	Free.
	(*b*) Picture postcards, Christmas, New Year, birthday, or similar cards, calendars and calendar mounts, menu cards, and other forms of stationery imported as such, whether bearing pictures or otherwise	*ad valorem* 20%
	(*c*) Other, n.e.e...	*ad valorem* 10%

CLASS XII.—FANCY GOODS, TIMEPIECES, AND MUSICAL INSTRUMENTS.

Item	Article	Duty
		Sh. cts.
141	Band instruments and stands, the *bona fide* property of any military, naval, police or volunteer corps, or imported by, or on behalf of, or for presentation to, any religious body or the Boy Scout, Girl Guide, or other similar Association, and not being the property of individuals	Free.

CLASS XII.—FANCY GOODS, TIMEPIECES, AND MUSICAL INSTRUMENTS—(*continued*).

Item	Article	Duty
		Sh. cts.
142	Beads	per pound .. .. 60 (or 20% *ad valorem*, whichever is the greater).
143	Clocks and watches—	
	(*a*) Tower clocks—	
	(i) For churches and public buildings	Free.
	(ii) Other..	*ad valorem* 10%
	(*b*) Other clocks and watches	*ad valorem* 20%
144	Cups, medals and other trophies, imported for presentation—	
	(*a*) As prizes at public examinations, exhibitions, shows, or for competitions of skill or sport open to the public or members of recognised clubs	Free
	(*b*) For bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science or for honourable or meritorious public services ..	Free.
	Provided that proof to the satisfaction of the Commissioner of Customs is produced prior to clearing such articles through the Customs that they are intended for presentation as specified above.	
145	Organs and blowers therefor, harmoniums, and church plate, imported by or for presentation to any religious body ..	Free.
146	Sporting and athletic goods, n.e.e., used exclusively for indoor and outdoor games, but not including clothing	*ad valorem* 10%
147	Toys and games, children's, including toy cycles, scooters and the like	*ad valorem* 10%

CLASS XIII.—MISCELLANEOUS.

Item	Article	Duty
		Sh. cts.
148	Baggage, the *bona fide* baggage of a passenger, the property of and accompanied by such passenger, as defined below :— *Bona fide* baggage shall consist of : necessary and appropriate wearing apparel and personal effects ; binoculars, cameras, sports requisites, portable typewriters, toys and articles for household use (such as sewing machines, furniture, carpets, pictures, glassware, linen, cutlery, crockery and plate) which are proved to the satisfaction of the Commissioner of Customs to have been in personal or household use by the passenger and are not for sale ; instruments and tools for the professional use of passengers. *Bona fide* baggage shall not include such articles as the following : Arms, ammunition, beverages, cigars, cigarettes or tobacco, perfumed spirits, carriages, motor vehicles, bicycles, musical instruments (unless elsewhere provided for), saddlery, provisions. *Note.* (1) Duty shall not be leviable on alcoholic liquors or perfumed spirits not exceeding one pint of each, cigars not exceeding 50 in number, cigarettes not exceeding 100 in number, or tobacco not exceeding half-pound in weight. (2) *Bona fide* baggage landed at any Customs port within two months of the arrival of the passenger, or such further period as the Commissioner of Customs may allow, may be included in the above exemption at the discretion of the Commissioner.	Free.

CLASS XIII.—MISCELLANEOUS—(*continued*).

Item	Article	Duty
		Sh. cts.
149	Blasting compounds, including all kinds of explosives, fuses, and detonators suitable and intended for blasting and not suitable for use as fireworks or in firearms	Free.
150	Cinematograph projectors and magic lanterns and slides therefor, imported for use in or by scientific or educational institutions	Free.
151	Church decorations, altars, bells, fonts, lecterns, pulpits and vestments imported by or for presentation to any religious body	Free.
152	Coffins, funerary urns and caskets	Free.
153	Consular goods, namely: articles for the official use of any foreign consulate or, on first arrival in the territory, the household and personal effects of the consular representative of any foreign country, or his family or suite, if such consular representative is not engaged in any other business or profession in the territory: Provided that a similar privilege is accorded by such foreign country to the British Consulate therein ..	Free.
154	Containers, including boxes, tins, bottles, jars and other packages, imported full of any article liable to a specific rate of duty and being ordinary trade packages for the goods contained therein	Free.
155	Felt, rubberoid, uralite and similar substances for building purposes; flooring composition and roofing compounds ..	*ad valorem* 10%
156	Films, cinematograph, printed or exposed for exhibition—	
	(*a*) Of a scientific or educational nature for exhibition solely to or by scientific or technical societies or in educational institutions	Free.
	(*b*) Other	per 500 linear feet .. 2 00

CLASS XIII.—MISCELLANEOUS—(*continued*).

Item	Article	Duty	
			Sh. cts.
157	Fireworks	per pound gross.. ..	2 00
158	Ice	Free.	
159	Lifebelts, lifebuoys, and other life-saving apparatus	Free.	
160	Matches—		
	(*a*) In boxes of not more than 100 matches	per gross of boxes ..	3 00
	(*b*) In boxes containing more than 100 and not more than 200 matches	per gross of boxes ..	6 00
	(*c*) And for every additional 100 matches, or part of 100, in excess of 200 per box	per gross of 100 matches	3 00
	(*d*) Tear-off matches, in strips, discs or booklets	per 1,000 matches ..	25
161	Models, scale or working, and plaster and similar advertising models, but not including toys or dressmakers', hairdressers' or similar display models	Free.	
162	Museum and natural history exhibits and specimens, for public museums or for scientific purposes	Free.	
163	Official, military and naval stores and goods imported by civil, military and naval officers :—		
	(*a*)		
	(*b*) Baggage, equipment and stores imported by the Inspector General, K.A.R., or his staff officer for the use of the said officers or either of them whilst travelling on duty	Free.	

CLASS XIII.—MISCELLANEOUS—(*continued*).

Item	Article	Duty
163	Official stores, etc.—(*contd.*)	
	(*c*) Goods imported by or consigned direct to officers or men on board vessels of His Majesty's Navy for their personal use or consumption on board such vessels ..	Free.
	(*d*) Goods imported for His Majesty's land or sea forces in the territory, on satisfactory proof to the Commissioner of Customs that they have been imported solely for such purpose and are the property of His Majesty.. ..	Free.
	(*e*) Goods imported by or purchased prior to clearing through the Customs by, or for the use of, the Government of any British territory in East Africa or the Kenya and Uganda Railways and Harbours Administration ..	Free.
	(*f*) Officers' uniforms, accoutrements and equipment—	
	(i) The uniform of a naval, military or civil Government officer, including the necessary arms, badges and equipment thereto	Free.
	(ii) The camp furniture, fittings and equipment of officers in the service of the Government, namely, in respect of each officer for each normal tour of service, one tent, table, chair, bed, mattress, bath and canteen, and, in respect of each officer, during his total service in the territory, one rifle, one shotgun, one revolver, and 300 rounds of ammunition	Free.
	(*g*) Regimental plate, furniture and other mess fittings, the property of a regimental mess or the joint property of the officers of a regimental mess	Free.
	(*h*) Goods imported with the sanction of the Governor by Boundary or other Special Commissioners and their assistants for their private use while executing their duties	Free.
	(*i*) Goods imported for the official use of Trade Commissioners who are not engaged in, or connected with, any other business or profession in the territory	Free.

CLASS XIII.—MISCELLANEOUS—*(continued)*.

Item	Article	Duty
163	Official stores, etc.—*(contd.)* (*j*) Machinery, plant, materials and rolling stock imported, or purchased prior to clearing through the Customs, by an individual or firm under contract to the Government, where such exemption from Customs duty forms part of the terms of the contract	Free.
164	Packing materials: metal drums, empty, tin plates and other materials not specially provided for, imported for the packing for wholesale distribution or export of oil, kerosene or motor spirit, or of goods the product of agricultural, manufacturing or industrial operations within the territory	Free.
165	Rifles, and parts of such rifles, imported into the territory by members of the Kenya Rifle Association or any other Rifle Association or Club recognised by the Government or imported by members of the Uganda Volunteer Reserve for removal into the Uganda Protectorate: Provided that such rifles and parts are imported solely for use by the importers in connexion with their duties as members of such Association, Club or Volunteer Reserve, and that satisfactory proof to that effect is produced to the Commissioner of Customs	Free.
166	School stationery, instruments, appliances and similar requisites imported by or on behalf of a recognised educational institution solely for purposes of tuition	Free.
167	Samples and miscellaneous articles not imported as merchandise which the Commissioner of Customs shall decide to be of no commercial value	Free.
168	Scientific apparatus, and instruments, for laboratory use, scientific observation or record, or for the control of manufacturing operations	Free.

CLASS XIII.—MISCELLANEOUS—(*continued*).

Item	Article	Duty
169	Ships, launches, lighters, boats and barges, imported complete or in sections; parts and accessories thereof, not including rope, canvas in the piece, cordage or similar running stores, or batteries, magnetos or sparking plugs: Provided that when condemned, or handed over to be broken up, duty shall be paid to the Customs on the hull, parts and fittings according to the tariff that may then be in force	Free.
170	Surgical and dental instruments and appliances; instruments and appliances used in the diagnosis or treatment of diseases or affections of the human or animal body ..	Free.
171	Uniforms and equipment imported by or on behalf of the Boy Scout, Girl Guide, or other similar Association	Free.
172	Window glass substitutes	*ad valorem* 10%
173	Works of art (painting, sculpture and the like), imported for permanent public exhibition	Free.

CLASS XIV.—GENERAL.

Item	Article	Duty
174	All goods, wares and merchandise, not provided for under any other heading in the Tariff or under any special law relating to the Customs	*ad valorem* 20%

GENERAL NOTES.

The headings of the respective classes in this Schedule are used only for convenience of classification, and shall not in any way affect the interpretation of the Tariff.

" n.e.e. " means " not elsewhere enumerated."

The term " in bulk," when it appears in the Tariff, means—

(*a*) goods loose without packing, or loose in barrels, casks, or any other single outside package, but not including goods imported by parcel post;

(*b*) when in internal packages, that the net contents of any immediate container of goods weigh not less than ten pounds or measure not less than one imperial gallon.

Goods chargeable with duty by weight are, except where otherwise provided for, charged with duty on the net weight, which may be arrived at either by weighing net, or deducting from the gross weight the actual tare or an average tare agreed to by the importer.

" Piece goods " shall not include material which is defined by selvedge or by pattern for cutting up into separate articles.

Tins, jars, bottles and other receptacles of reputed weight or content to be deemed not less than such weight or content.

Twenty-four reputed half-pints, twelve pints, six reputed quarts, or four reputed imperial quarts to be deemed to be not less than one gallon.

Cement in packages of not less than 350 lb. and not more than 400 lb. to be deemed 400 lb.

Oils and motor spirits in ordinary reputed two five-American-gallon or ten one-American-gallon tins to be deemed to be not less than $8\frac{1}{3}$ imperial gallons, and two reputed four-gallon tins to be deemed to be not less than eight imperial gallons.

" Proof " shall mean the strength of proof as ascertained by Sykes' hydrometer.

" Proof spirits " shall mean spirits which, at a temperature of 51 degrees Fahrenheit, weigh 12/13ths of an equal volume of distilled water at the same temperature.

A complete article imported in an unassembled condition, except where specially provided for, is liable to the rate of duty which would be applicable to that article if imported in a fully set up condition, notwithstanding that the constituent parts are packed separately and are separately provided for elsewhere in the Tariff.

Integral parts of an article which is liable to an *ad valorem* duty, or is free of duty, imported for replacement purposes, or as spare parts, shall be liable to the same rate of duty as the article itself, or free of duty, as the case may be, unless they are specifically excluded, or provided for elsewhere, in the Tariff.

NO. 2 OF 1930.

Date of assent. [23RD APRIL, 1930.]

An Ordinance to Amend the Courts Ordinance.

Date of commencement. *23rd April, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

Cap. 5.

1. This Ordinance may be cited as " the Courts (Amendment) Ordinance, 1930 ", and shall be read as one with the Courts Ordinance (Chapter 5 of the Revised Edition), hereinafter called " the Principal Ordinance ".

Amendment of section 2 of the Principal Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by adding thereto the following definition :—

" ' Native ' means any native of Africa not of European or Asiatic extraction, but includes any Arab and Somali, and also any Baluchi born in Africa."

Jurisdiction of magistrates of subordinate courts.

3. The following section to be numbered section 7A shall be inserted between sections 7 and 8 of the Principal Ordinance :—

" 7A. The Governor may from time to time assign each or any magistrate of a subordinate court of the first, second, or third class respectively to such province or district as he shall think fit, but every such magistrate shall have jurisdiction throughout the Colony."

No. 3 OF 1930.

[23RD APRIL, 1930.] Date of assent.

An Ordinance to Amend the Public Trustee's Ordinance, 1925.

23rd April, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Public Trustee's (Amendment) Ordinance, 1930 ", and shall be read as one with the Public Trustee's Ordinance, 1925, hereinafter referred to as " the Principal Ordinance." Short title. No. 7 of 1925.

2. Section 4 of the Principal Ordinance is hereby amended by the deletion of the word and figures " Shgs. 1,000 " in the proviso thereto and the substitution therefor of the word and figures " Shgs. 2,000 ". Amendment of section 4 of the Principal Ordinance.

3. Section 5 of the Principal Ordinance is hereby amended by the deletion of the word and figures " Shgs. 1,000 " in the proviso thereto and the substitution therefor of the word and figures " Shgs. 2,000 ". Amendment of section 5 of the Principal Ordinance.

No. 4 OF 1930.

Date of assent. [23RD APRIL, 1930.]

An Ordinance to Amend the Widows' and Orphans' Pension Ordinance.

Date of commencement. *23rd April, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as " the Widows' and Orphans' Pension (Amendment) Ordinance, 1930," and shall be read as one with the Widows' and Orphans' Pension Ordinance (Chapter 34 of the Revised Edition), hereinafter referred to as " the Principal Ordinance ".

Cap. 34.

Amendment of section 27 of the Principal Ordinance.

2. Section 27 of the Principal Ordinance, as amended by the Widows' and Orphans' Pension (Amendment) Ordinance, 1927, is hereby further amended by the insertion of the figure " (1) " at the commencement thereof and by the addition of the following sub-section :—

" (2) If a contributor under this Ordinance is appointed to the service of another East African Government, and he is not in receipt of salary from this Government he shall cease to contribute under this Ordinance as from the date of such appointment ".

No. 5 OF 1930.

[23RD APRIL, 1930.] Date of assent.

An Ordinance to Amend the Harbours Regulation Ordinance, 1928.

23rd April, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Harbours Regulation (Amendment) Ordinance, 1930," and shall be read as one with the Harbours Regulation Ordinance, 1928, hereinafter referred to as " the Principal Ordinance." Short title. No. 33 of 1928.

2. Section 40 of the Principal Ordinance is hereby repealed. Repeal of section 40 of the Principal Ordinance.

3. Section 49 of the Principal Ordinance is hereby amended by inserting before the last paragraph but one of the section the following :— Amendment of section 49 of the Principal Ordinance.

"Any such regulations shall be published in the Gazette at least fourteen days before the date on which the High Commissioner proposes to make such regulations."

An Ordinance to make Provision for the Prevention of Adulteration of Food and Drugs.

ARRANGEMENT OF SECTIONS

SECTION. SUBJECT.

1.—Short title and commencement.
2.—Interpretation.

PART I.

GENERAL PROVISIONS.

3.—Restrictions on mixing food and drugs with other ingredients.
4.—Prohibition against sale of articles of food or drugs not of the nature, substance, or quality demanded.
5.—Provisions as to sale of compounds.
6.—Protection from liability where article properly labelled.
7.—Offences in relation to the abstraction from articles of food or parts thereof.

PART II.

ADMINISTRATION.

8.—Duty of local authority to enforce Ordinance.
9.—Powers of sampling.
10.—Right to have samples analysed.
11.—Division of and dealings with samples.
12.—Power of Director of Medical and Sanitary Services or Director of Agriculture to have articles analysed.
13.—Special provisions as to sampling of milk.
14.—Obstruction of officers in discharge of duties.

PART III.

LEGAL PROCEEDINGS.

15.—Prosecution and penalties for offences.
16.—Service and evidence of certificates of analysis.
17.—Conditions under which warranty may be pleaded as defence.
18.—False warranties and certificates.
19.—Application of fines.
20.—Power of the Governor to make Regulations.
21.—Saving of Public Health Ordinance.

SCHEDULES.

NO. 6 OF 1930.

[13TH MAY, 1930.] Date of assent.

An Ordinance to make provision for the Prevention of Adulteration of Food and Drugs.

BY NOTICE. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " The Food and Drugs (Adulteration) Ordinance, 1930 ", and shall come into operation upon such date as the Governor may by notice in the Gazette appoint. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires :— Interpretation.

" Food " includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food and also includes flavouring matters and condiments.

" Drug " includes medicine for internal or external use.

" Local authority " means a local authority as defined by the Public Health (Amendment) Ordinance, 1928. No. 22 of 1928.

" Public analyst " means a person appointed by the Governor or by a local authority with the approval of the Governor to act in the capacity of analyst for the purposes of this Ordinance.

" Medical officer of health " means a medical officer of health as defined by the Public Health Ordinance, and includes an assistant medical officer of health. *Cap. 124.*

" Sanitary inspector " includes any person for the time being lawfully acting in the capacity of a sanitary inspector.

PART I.

General Provisions.

Restrictions on mixing food and drugs with other ingredients.

3. (1) No person shall mix, colour, stain or powder or order or permit any other person to mix, colour, stain or powder—

(*a*) any article of food with any ingredient or material so as to render the article injurious to health;

(*b*) any drug with any ingredient or material so as to affect injuriously the quality or potency of the drug;

with the intent that the article of food or drug may be sold in that state.

(2) No person shall sell any article of food or drug so mixed, coloured, stained or powdered as aforesaid.

(3) If any person contravenes any of the provisions of this section he shall be guilty of an offence:

Provided that a person shall not be convicted under this section in respect of the sale of any article of food or of any drug if he shows to the satisfaction of the court before whom he is charged that he did not know, and could not with reasonable diligence have ascertained that the article of food or drug sold by him was so mixed, coloured, stained or powdered as aforesaid.

Cap. 124.

(4) Where any regulations made under this Ordinance or under the Public Health Ordinance prohibit or restrict the addition of any preservative or other ingredient or material to any article of food, the addition of any such ingredient or material, if made in contravention of the regulations, shall for the purposes of this Ordinance be deemed to render the article injurious to health.

Prohibition against sale of articles of food or drugs not of the nature, substance, or quality demanded.

4. (1) No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, or not of the substance, or not of the quality, of the article demanded by the purchaser.

(2) If any person contravenes the provisions of this section he shall be guilty of an offence:

Provided that an offence under this section shall not be deemed to have been committed—

(*a*) where any ingredient or material not injurious to health has been added to the article of food or drug because it is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the article of food or drug, or to conceal the inferior quality thereof;

(*b*) where the food or drug is the subject of a patent in force, and is supplied in the state required by the specification of the patent or is a proprietary medicine;

(*c*) where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(3) In any prosecution under this section it shall be no defence to allege that the purchaser, having bought only for analysis, is not prejudiced.

(4) Where any regulations made under this Ordinance or under the Public Health Ordinance prescribe the composition of any article of food intended for sale, or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, the purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded an article complying with the provisions of the regulations as regards the presence or amount of any constituent, ingredient or material specified in the regulations. *Cap. 124.*

Provisions as to sale of compound.

5. If any person sells any compound article of food, or any compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, he shall be guilty of an offence.

Protection from liability where article properly labelled.

6. (1) No person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any ingredient or material not injurious to health,

and not intended fraudulently to increase its bulk, weight or measure, or to conceal its inferior quality, if at the time of delivering the article of food or drug he supplies to the person receiving it a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that it is mixed.

(2) For the purposes of this section, a label shall not be deemed to be distinctly and legibly written or printed if the notice of mixture given by the label is obscured by other matter on the label.

Offences in relation to the abstraction from articles of food of parts thereof.

7. If any person abstracts from any article of food any part of it so as to affect injuriously its nature, substance or quality with the intent that it may be sold in its altered state without notice, or if any person sells any article so altered without making disclosure of the alteration, he shall be guilty of an offence.

PART II.

ADMINISTRATION.

Duty of local authority to enforce Ordinance.

8. (1) It shall be the duty of every local authority to put into force from time to time, as occasion may arise, and as may be, under their special circumstances, reasonably practicable, the powers with which they are invested so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to procure samples for analysis.

(2) If the Governor after communication with the local authority is of the opinion that the authority have failed to execute or enforce any of the provisions of this Ordinance in relation to any article of food and that their failure affects the general interests of the consumer, the Governor may by order empower an officer to execute and enforce these provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred under any such order shall be recoverable by the Governor from the local authority and the amount so recovered shall be treated as expenses incurred by the authority under this Ordinance.

Powers of sampling.

9. (1) Any medical officer of health, sanitary inspector, inspector of weights and measures or police officer, acting under the direction and at the cost of the local authority appointing him or charged with the execution of this Ordinance

may purchase any sample of any food or drug and any such officer or inspector acting as aforesaid is in this Ordinance referred to as a " sampling officer ".

(2) A sampling officer may take at the place of delivery any sample of any food in course of delivery to the purchaser or consignee in pursuance of any contract for the sale thereof to the purchaser or consignee :

Provided that no sample of food other than milk shall be taken under this sub-section except upon the request or with the consent of the purchaser or consignee.

(3) If any sampling officer applies to purchase any article of food or any drug exposed for sale or on sale by retail on any premises (including any street or open space of public resort), and tenders the price for the quantity which he requires for the purpose of analysis not being more than is reasonably requisite, and the person exposing the article or drug for sale or having it for sale on the premises, refuses to sell to the officer such quantity thereof as aforesaid, or if the seller or consignor or any person entrusted by him for the time being with the charge of any article of food of which a sampling officer is empowered to take a sample in course of delivery refuses to allow the officer to take the quantity which he requires for the purpose of analysis, the person so refusing shall be guilty of an offence and liable to a fine not exceeding ten pounds :

Provided that where any article of food or drug is exposed for sale in an unopened tin or package duly labelled, no person shall be required to sell it except in the unopened tin or package in which it is contained.

Right to have samples analysed.

10. (1) Where a sampling officer procures a sample of food or of a drug, he shall, if he suspects the sample or the article from which the sample is taken to have been sold contrary to any provision of this Ordinance, or that the provisions of this Ordinance have otherwise been infringed with respect to that article, submit it to be analysed by the public analyst.

(2) The public analyst shall as soon as practicable analyse any sample sent to him in pursuance of this Ordinance and shall give the sampling officer a certificate specifying the result of the analysis in the form set forth in the first schedule to this Ordinance, or a form to the like effect.

Division of and dealings with samples.

11. (1) Where a sampling officer procures a sample of any article with the intention of submitting it to analysis he shall, after the purchase has been completed, forthwith notify to the seller or his agent who sold the sample his intention to have it analysed by the public analyst and shall then and there divide the sample into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall—

(*a*) if required to do so deliver one part to the seller or his agent;

(*b*) retain one part for future comparison;

(*c*) if he thinks fit to have an analysis made submit one part to the analyst.

(2) In the case of a sample taken of milk in course of delivery the person taking the sample shall, if the name and address of the consignor appear on the can, bottle or other receptacle containing the milk sampled, forward to him by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up.

Power of Director of Medical and Sanitary Services or Director of Agriculture to have articles analysed.

12. The Director of Medical and Sanitary Services may, in relation to any matter appearing to him to affect the general interests of the consumer, and the Director of Agriculture may, in relation to any matter appearing to him to affect the general interests of agriculture in the Colony, or any other person who may be authorised by the Governor so to do may, direct an officer to procure for analysis samples of any article of food or any drug and thereupon the officer shall have all the powers of a sampling officer under this Ordinance and this Ordinance shall apply as if the officer were a sampling officer.

Special provisions as to sampling of milk.

13. (1) The provisions of this Ordinance relating to the taking of samples, and proceedings in connection therewith, shall, in relation to milk, have effect subject to the provisions of the second schedule to this Ordinance.

(2) So much of any contract as requires a purveyor of milk, on a sample of his milk being taken under this Ordinance, to send to the person from whom he procured the milk any part of such sample, or to give that person notice that a sample has been so taken, shall be void.

(3) For the purpose of this section and the said schedule the expression " purveyor of milk " includes a seller of milk whether wholesale or by retail.

Obstruction of officers in discharge of duties.

14. Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent the due execution by the inspector or officer of his duty under this Ordinance shall be guilty of an offence.

PART III.

Legal Proceedings.

Prosecution and penalties for offences.

15. (1) Where a public analyst having analysed any article has given his certificate of the result from which it appears that an offence under this Ordinance has been committed, the sampling officer may take proceedings under this Ordinance before any magistrate having jurisdiction in the place where the article of food or drug sold was actually delivered to the purchaser or the sample taken.

(2) A person found guilty of an offence for which no special penalty is imposed by this Ordinance shall be liable on conviction—

(*a*) in the case of a first offence to a fine not exceeding twenty pounds; and

(*b*) in the case of a second offence, to a fine not exceeding fifty pounds, and

(*c*) in the case of a subsequent offence, to a fine not exceeding one hundred pounds; or if in the opinion of the court, the offence was committed by the the personal act, default, or culpable negligence of the person accused, and the court is of opinion that a fine will not meet the circumstances of the case, to imprisonment of either description for a term not exceeding three months.

(3) In any prosecution under this Ordinance the summons shall state the particulars of the offence or offences alleged and also the name of the prosecutor and shall not be made returnable in less than fourteen days from the date on which it is served.

(4) In any prosecution under this Ordinance for selling any article of food or drug contrary to the provisions of this Ordinance, it shall be lawful for the prosecutor to proceed against the person who actually sold the article or against the person on whose behalf the article was sold or against both such persons.

(5) Where an employer is charged with an offence under this Ordinance he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Ordinance and that the said other person had committed the offence in question without his knowledge, consent or connivance, the said other person shall be summarily convicted of the offence and the employer shall be exempt from any penalty.

Service and evidence of certificates of analysis.

16. (1) Where a certificate of analysis has been obtained on behalf of a prosecutor, a copy thereof shall be served with the summons.

(2) Where a certificate of analysis is intended to be produced by a defendant, a copy thereof shall be sent to the prosecutor at least three clear days before the day appointed for hearing the case.

(3) In any proceedings for an offence under the foregoing provisions of this Ordinance, the production by one of the parties of a certificate of a public analyst in the form prescribed by this Ordinance shall be sufficient evidence of the facts stated therein unless the other party requires that the analyst shall be called as a witness.

(4) In any proceedings under this Ordinance the part of the sample retained by the sampling officer who procured it shall be produced at the hearing.

Conditions under which warranty may be pleaded as defence.

17. (1) Subject to the provisions of this section, a defendant shall be discharged from the prosecution if he proves to the satisfaction of the court in respect of the sale of an article, that he had purchased the article in question as the same in nature, substance and quality as that demanded of him by the person to whom he sold the article, and with a

written warranty to that effect, and that he had no reason to believe at the time he sold it that it was otherwise, and that he sold the article in the same state as when he purchased it.

(2) A warranty or invoice shall only be a defence to proceedings under this Ordinance if—

(*a*) the defendant has within seven days of the service of the summons sent to the prosecutor a copy of the warranty or invoice with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it and has also sent a like notice of his intention to that person; and

(*b*) in the case of a warranty or invoice given by a person resident outside the Colony the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.

(3) The person by whom the warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(4) Where the defendant is the servant of the person who purchased the article under a warranty or invoice, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

False warranties and certificates.

18. (1) Every person who wilfully applies to an article of food, or drug, in any proceedings under this Ordinance, a certificate or warranty given in relation to any other article of food or drug, or who wilfully gives a label with any article of food or drug sold by him which falsely describes the article sold, shall be guilty of an offence.

(2) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statement or description contained therein was true.

(3) Where the defendant in a prosecution under this Ordinance has been discharged under the provisions of this Ordinance relating to warranties, any proceedings under this section for giving the warranty relied on by the defendant in the prosecution may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

Application of fines.

19. Any fine recovered under this Ordinance—

(*a*) in the case of a prosecution by a sampling officer of the local authority, shall be paid to the authority appointing or authorising the officer and shall be applied towards the expenses of the authority under this Ordinance;

(*b*) in the case of any other prosecution, shall be paid and applied in accordance with the law regulating the application of fine for offences punishable summarily.

Power of the Governor to make regulations.

20. The Governor may make regulations:—

(*a*) for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, cheese or other food, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed, skimmed, separated, or dried milk), cream, butter, cheese or other food, shall for the purposes of this Ordinance raise a presumption, until the contrary is proved, that the milk, cream, butter, cheese or other food is not genuine or is injurious to health, and a public analyst shall have regard to such regulations in certifying the result of an analysis under this Ordinance;

(*b*) For regulating the appointment of public analysts and for prescribing the fees payable in respect of analysis performed by such analysts.

Saving of Public Health Ordinance.

21. The provisions of this Ordinance shall be in addition to and not in derogation of the powers conferred by the Public Health Ordinance.

FIRST SCHEDULE.

Form of Certificate of Public Analyst.

To,*

I, the undersigned, public analyst for the.....
.....do hereby certify that I received on the.....day of.....19.....
from†.....
a sample of .....for analysis, (which then weighed ‡.....) and have analysed it and delare the result of my analysis to be as follows :—

I am of opinion that it is a sample of genuine

or

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under :—

.....
.....

Observations§

.....

As witness my hand this.....day of.....19.....
A.B.,
at

* Here insert the name of the sampling officer submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are, or are not, injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SECOND SCHEDULE.

Special Provisions as to Milk.

1. Where a sample of milk is procured from a purveyor of milk, he shall, on being required to do so by the person by whom or on whose behalf the sample was taken state the name and address of the seller or consignor from whom he received the milk.

2. The local authority in whose district the sample was taken, may take or cause to be taken one or more samples of milk in course of transit or delivery from such seller or consignor.

Within sixty hours after the sample of milk was procured from the purveyor he may serve on the local authority a notice stating the name and address of the seller from whom he received the milk and the time and place of delivery to the purveyor by the seller or consignor of milk from a corresponding milking, and requesting them to take immediate steps to procure, as soon as practicable, a sample of milk in the course of transit or delivery from the seller or consignor to the purveyor, unless a sample has been so taken since the sample was procured from the purveyor, or within twenty-four hours prior to the sample being procured from the purveyor :

Provided that the purveyor shall not have any such right to require that such a sample shall be taken in cases where the milk from which the sample procured from the purveyor was taken was a mixture of milk obtained by the purveyor from more than one seller or consignor.

If a purveyor has served on the local authority such a notice as aforesaid, and the local authority have not procured a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under this Ordinance shall be taken against the purveyor in respect of the sample of milk procured from him.

3. Any sample of milk so taken in the course of transit or delivery shall be submitted for analysis. Such analysis shall be performed by the analyst to whom the sample procured from the purveyor is or was submitted, unless the services of such analyst are not available.

4. If proceedings are taken against the purveyor of milk, a copy of the certificate of the result of the analysis of every sample so taken in the course of transit or delivery shall be furnished to the purveyor and every such certificate shall, subject to the provisions of section 16 of this Ordinance, be sufficient evidence of the fact stated therein, and shall be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as he purchased it.

5. The local authority of the district in which the first-mentioned sample was taken may, instead of, or in addition to, taking proceedings against the purveyor of milk, take proceedings against the seller or consignor.

6. If a sample of milk of cows in any dairy is taken in course of transit or delivery from that dairy, the owner of the cows may, within sixty hours after the sample of milk was procured, serve on the local authority a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows, and the foregoing provisions shall apply accordingly :

Provided that the person taking the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

No. 7 OF 1930.

Date of assent. [13TH MAY, 1930.]

An Ordinance to Amend the Local Government (District Councils) Ordinance, 1928.

Date of commencement. *13th May, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as " the Local Government (District Councils) (Amendment) Ordinance, 1930," and shall be read as one with the Local Government (District Councils) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance."

No. 21 of 1928.

Repeal and replacement of section 6 (1) (*c*) of the Principal Ordinance.

2. Sub-section (1) (*c*) of section 6 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

" (*c*) The District Commissioner of the district, or a district officer deputed by him :

Provided that such district officer shall be entitled to attend, in an advisory capacity and without a vote, meetings at which the District Commissioner is present; and provided further that the Provincial Commissioner of the Province shall be entitled to attend and speak at any meeting of the Council."

Amendment of section 26 of the Principal Ordinance.

3. Section 26 of the Principal Ordinance is hereby amended by substituting the word " fourteen " for the word " twenty-one " in the third line of the section.

Amendment of section 60 of the Principal Ordinance.

4. Section 60 of the Principal Ordinance is hereby amended by adding at the end of the first paragraph of the section the following :—

" and the same shall be vested in the Council in trust to keep the same for the use and benefit of the inhabitants."

Amendment of section 61 of the Principal Ordinance.

5. Section 61 of the Principal Ordinance is hereby amended by substituting the words " part of a Native Reserve or of a Forest Reserve which is not within such district " between the word " crosses " and the words " the Council " in line three.

Powers of Provincial Commissioner or District Commissioner where no District Council.

6. In any area of the Colony, other than a municipality or a township, for which no District Council has been constituted and to which the Governor by order has declared that the provisions of this section shall apply, the Provincial Commissioner or the District Commissioner may from time to time issue orders for either of the following purposes :—

(1) For preserving public decency.

(2) For controlling and regulating native dances on farms or elsewhere within the area.

Such orders shall come into force on the date of their publication in the Gazette.

Orders to have effect of by-laws.

7. The provisions of sections 70 and 71 of the Principal Ordinance shall apply to orders so issued as if they were by-laws made by a council under the Principal Ordinance.

No. 8 OF 1930.

Date of assent. [13TH MAY, 1930.]

An Ordinance to Amend the Sugar Ordinance.

Date of commencement. *13th May, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

Cap. 134.

1. This Ordinance may be cited as " the Sugar (Amendment) Ordinance, 1930," and shall be read as one with the Sugar Ordinance (Chapter 134 of the Revised Edition), hereinafter referred to as " the Principal Ordinance."

Restriction on supplying sugar or sugar juice in prohibited area.

2. No person shall in any prohibited area give, barter, sell, convey, deliver, or otherwise supply any sugar or sugar juice to any other person unless such other person is the holder of a permit under section 5 of the Principal Ordinance, and shall first produce such permit to the supplier.

Rewards to informers.

3. Where on any conviction for an offence against the Principal Ordinance a fine is imposed, the court may award any sum, not exceeding half the amount of the fine recovered, as a reward to any person, not being a person whose duty it is to detect or assist in the detection of such offences, who gave information leading to such conviction.

1930 *Native Lands Trust* No. IX.

NO. 9 OF 1930.

[13TH MAY, 1930.] Date of assent.

An Ordinance to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved.

13th May, 1930. Date of commencement.

ENACTED by the Govenor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Native Lands Trust Ordinance, 1930." Short title.

2. (1) The areas of Crown land described in Government Notice No. 394, published in the Official Gazette of the Colony dated the thirteenth day of October, 1926, are hereby declared to be Native Reserves and are reserved and set aside for the use and benefit of the native tribes of the Colony for ever, and a copy of this Ordinance duly authenticated together with maps showing the boundaries of the Native Reserves concerned shall be delivered to each Local Native Council throughout the Colony. Reservation of land for natives.

(2) It shall be lawful for the Governor, with the approval of the Legislative Council, from time to time to reserve for the use and benefit of the native tribes of the Colony such further areas of Crown land as in his opinion may be required for their maintenance and support. Any area so reserved shall be deemed for the purposes of this Ordinance to be a Native Reserve.

(3) Notice of every reservation under sub-section (2) shall be published in the Gazette and shall specify—

(*a*) the boundaries of the Native Reserve; and

(*b*) the tribe or tribal unit for whose use and benefit such reservation has been made.

Establishment of Native Lands Trust Board.

3. (1) There shall be established a Native Lands Trust Board (hereinafter referred to as the " Central Board ") which shall consist of :—

(*a*) The Governor as President;

(*b*) The Colonial Secretary as Vice-President;

(*c*) The Attorney General;

Provided that in the event of the creation of the appointment of High Commissioner in, for, or of East Africa, the said High Commissioner shall be President of the Central Board in the place of the Governor, the Chief Secretary to the High Commissioner shall be Vice-President of the Central Board in the place of the Colonial Secretary, and the Colonial Secretary shall have a seat on the Board in the place of the Attorney General, who shall, in such case, be no longer a member of the Board.

(*d*) The Chief Native Commissioner;

(*e*) The Commissioner of Lands;

(*f*) A senior Commissioner to be selected by the Governor;

(*g*) Four unofficial members to be nominated by the Governor, or, if the Governor is not President, by the President after considering any suggestions of the Governor or of the Central Board itself.

(2) The Central Board may from time to time, if it should deem it desirable, for the purpose of the consideration of any particular matter co-opt the Chairman of the Local Board concerned as a member of the Central Board, and may for a like purpose after reference to any Local Native Council particularly concerned co-opt one or more Africans as members of the Central Board.

Provided that when, in the opinion of the Governor, there shall be an African or Africans who is or are sufficiently capable of representing and speaking for the native community generally, then and in such case the Governor shall, as soon as may be possible, appoint at least one such African to be a full member of the Central Board :

Provided further that in the event of the creation of the appointment of High Commissioner in, for, or of East Africa, the said High Commissioner shall, in the events mentioned above as soon as may be possible, on the recommendation of the Governor, appoint at least one such African to be a full member of the Central Board.

(3) The President or Vice-President and four other members shall form a quorum.

(4) Questions before the Central Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the President or Vice-President, as the case may be, shall have a second or casting vote :

Provided that no lease or licence shall be granted under this Ordinance, and no land shall be excluded from a Native Reserve for public purposes under this Ordinance unless there shall be at least five votes in favour of the granting of such lease or licence, or in favour of the exclusion of such land from a Native Reserve for public purposes.

Native Reserves to be under the control and management of the Central Board.

4. Subject to the provisions of this Ordinance, all lands in Native Reserves and all matters relating to such lands are hereby declared to be under the management and control of the Central Board, and all such lands shall be administered for the use and benefit of the native tribes for which they have, respectively, been reserved.

Establishment of Advisory Boards.

5. (1) There shall be established in every administrative district in which one or more Native Reserves may be situated an Advisory Board (hereinafter referred to as a " Local Board ") which shall consist of :—

(*a*) The Provincial Commissioner as Chairman ;

(*b*) The District Commissioner as Deputy Chairman ;

(*c*) One European unofficial member, to be nominated by the Governor : Provided that for the purpose of the consideration of any matter relating to land in a particular Native Reserve the Chairman may from time to time after reference to the Local Native Council concerned co-opt as an additional member any European who in the opinion of the Board possesses special knowledge of such Native Reserve ;

(*d*) One African member, to be nominated by the Governor, who shall, so far as practicable, be selected from the members of some Local Native Council established within the said administrative district after reference to such Council: Provided that for the purpose of the consideration of any particular matter the Chairman may from time to time after reference to the Local Native Council concerned co-opt one or more additional African or Africans as a member or members of the Board.

(2) The Chief Native Commissioner shall *ex officio* be a member of every Local Board.

(3) The Chairman or Deputy Chairman and three other members shall form a quorum.

Functions of Local Boards.

6. It shall be the duty of the Central Board to consult the Local Board concerned in regard to the following matters relating to any Native Reserve included in the administrative district for which such Local Board has been established :—

(*a*) Matters relating to the granting of leases or licences under section 8 of this Ordinance;

(*b*) Matters relating to and arising out of the exercise of the powers of the Governor under sections 15, 16 and 18 of this Ordinance;

(*c*) All matters relating to the management and development of land in a Native Reserve.

Disposal of land in Native Reserves.

7. Notwithstanding anything in any other Ordinance contained, no land in any Native Reserve shall be leased or otherwise disposed of except under and in accordance with the provisions of this Ordinance, and no lease or licence of or in respect of any such land shall be granted unless the Central Board is satisfied, after reference to the appropriate Local Board, that the following condition has been complied with, namely :—

(*a*) That the proposal to grant such lease or licence has been brought to the notice of the Local Native Council and of the natives concerned and that

such Local Native Council and such natives have had an opportunity of expressing their views upon the proposal;

and in the case of a lease, that the following further conditions have been complied with, namely :—

(*b*) That there is reason to believe that the natives of the tribe for which such land has been reserved will derive benefit, apart from any revenue which may accrue therefrom, from the grant of such lease;

(*c*) That the land to be leased is not being beneficially occupied by the natives of the tribe for which such land has been reserved, and is not likely, during the currency of the proposed lease, to be required for the use or support of such natives :

Provided that in no case shall any lease or licence be granted which is objected to by the Local Native Council or by any African member of the Local Board concerned without the prior approval of the Secretary of State.

Alienation or other disposal of land in Native Reserves.

8. (1) Subject to the provisions of the last preceding section, it shall be lawful for the Governor, with the advice and consent of the Central Board :—

(*a*) To lease any land in a Native Reserve. The rent payable in respect of any such lease shall be fixed by the Central Board, who shall also have power to revise such rent in accordance with the provisions of section 10 of this Ordinance at such periods or intervals as may be prescribed by Rules made under this Ordinance.

(*b*) To grant licences to and to enter into contracts with persons not being members of the tribe for which the land has been set aside relating to—

(*i*) the grazing of cattle in a Native Reserve;

(*ii*) the removal of timber or other forest produce from a Native Reserve;

(*iii*) the taking of sand, lime, stone and other common minerals (excluding salt) from a Native Reserve :

for periods not exceeding twelve months at any one time :

Provided that in the case of a lease or licence relating to any lands reserved for the occupation of the Masai tribe by virtue of the agreements dated, respectively, the ninth day of August, 1904, and the twenty-sixth day of April, 1911, regard shall be had to the terms of the said agreements and any subsequent agreements.

(2) Subject as aforesaid, the Governor may also, with the advice and consent of the Central Board, grant leases for special purposes. Every such lease shall *ipso facto* terminate as soon as the special purpose or purposes for which it was granted has or have been accomplished, notwithstanding that the term of the lease has not expired; and in every such lease there shall be implied a covenant by the lessee not to use the land leased for any purpose other than the purpose or purposes specified in the lease.

(3) All rents, stand premia, grazing fees or other profits whatsoever accruing from land in a Native Reserve, or from timber or other forest produce or from sand, lime, stone or other materials removed or taken from a Native Reserve, shall be paid to the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund, or may be paid to any member or members of the tribe concerned who may be considered by the Central Board after reference to the Local Board concerned to be entitled thereto.

(4) The Governor shall at the end of each year forward to the Secretary of State a return of all leases and licences granted under this Ordinance during such year.

Form of leases.

9. (1) Leases under section 8 of this Ordinance may be for any period not exceeding thirty-three years and shall be granted for such period and subject to such terms and conditions as may be prescribed by Rules made under this Ordinance, provided, however, that in exceptional cases with

the prior consent of the Secretary of State leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

Conditions applied in leases.

(2) Every such lease and every licence under this Ordinance shall contain provisions to the following effect—

(*a*) that the lessee or licensee binds himself to pay the rent or fee fixed by the Central Board, and any rent which may be fixed on revision;

(*b*) that the lessee or licensee binds himself to pay such compensation as the Central Board may assess for any damage or disturbance whatsoever caused to native individuals or communities in the exercise of the rights granted to him.

Chief Native Commissioner to execute leases.

(3) It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance.

Principles to be observed in fixing and revising rent.

10. In determining the rent to be demanded for any land in a Native Reserve and upon any revision of rent, the Central Board shall take into consideration the rent obtained or obtainable in respect of any other land in the immediate neighbourhood, and shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land, having regard to all the circumstances of the case:

Provided that upon any revision of rent, the Central Board shall not take into consideration any value due to capital expended upon the land by the same occupier during his term of occupancy or any increase in the value of the land due to the employment of such capital.

Lessees not to alienate land without consent.

11. Except as may be otherwise provided by Rules under section 22 of this Ordinance, it shall not be lawful for any lessee under this Ordinance to alienate the land comprised in his lease or any part thereof by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent of the Central Board first had and obtained. The granting or withholding of such consent shall be in the absolute and unfettered discretion of the Central Board and any sale, mortgage, transfer of possession, sub-lease, bequest, or other alienation effected without the consent of the Central Board shall be null and void.

Forfeiture of lease for non-payment of rent or breach of covenant.

12. If the rent or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if there shall be any breach of the lessee's covenants, whether express or implied, the Chief Native Commissioner or any person authorised by him in writing may serve a notice upon the lessee specifying the rent in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the Supreme Court for the recovery of the premises; and, on proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the land forfeited, and may order that possession of the land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

Forfeiture of licences.

13. (1) If the rent or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee shall fail to comply with, or shall commit any breach of, any of the conditions of his licence, the Chief Native Commissioner may cause an application to be made to a magistrate of the first-class within whose local jurisdiction the land the subject of the licence is situate, to declare the licence forfeited.

(2) Upon receipt of such application together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such statement together with a notice of the date, not being less than fourteen days from the date of such notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which such hearing has been adjourned it shall be proved to the satisfaction of the magistrate that rent is in arrear or that the licensee has failed to comply with or has commited a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may appear just, declare the licence forfeited

Debt not extinguished by forfeiture.

14. No forfeiture under either of the two last preceding sections shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

15. (1) The Govenor may at any time, with the advice and consent of the Central Board, by notice in the Gazette, exclude from a Native Reserve any land which may be required for any of the following purposes :— **Power of Governor to exclude from Native Reserve land required for public purposes.**

(*a*) Public roads or bridges;

(*b*) Public reservoirs, aqueducts, canals, water-courses or water pipe-lines;

(*c*) Public quays, wharves or landing places;

(*d*) Public railways or tramways;

(*e*) Public aerodromes;

(*f*) Development of electric power for public purposes from any lake, river or stream;

(*g*) Development of the mineral resources of the Colony;

(*h*) Government camps or stations;

(*i*) Buildings or works in connection with any of the foregoing purposes;

(j) The establishment of townships :

Provided, however, that no land shall be excluded from a Native Reserve under this section unless the Central Board is satisfied that the proposed exclusion has been brought to the notice of the Local Native Council and of the natives concerned and that representatives of the location or section concerned have been co-opted on the Local Board for the purpose of the discussion upon such proposed exclusion.

Provided further that in any case where the area of land proposed to be excluded from a Native Reserve under this section exceeds two hundred acres and the Local Native Council or the African member or members of the Local Board object to the exclusion of such area, then and in such case such area shall not be excluded from such Native Reserve unless and until the approval of the Secretary of State to such exclusion has been obtained.

(2) Where any land is excluded from a Native Reserve under this section the Governor shall, by notice in the Gazette, add to such Native Reserve from suitable, and, if possible, contiguous unalienated and unreserved Crown land an area equal in extent and, as far as possible, equal in value to the area excluded, and any area so added shall be deemed, for the purposes of this Ordinance, to be part of such Native

Reserve, provided that where land is excluded merely for the track of a road or a railway or for the actual site of a building, no such addition of land shall be made.

(3) Any native dispossessed by the exclusion of any land from a Native Reserve shall be entitled—

(i) to the use and occupation of the area which is added to the Native Reserve pursuant to sub-section (2) of this section, so far as the same may be practicable; and

(ii) to compensation in money in respect of—

(*a*) any buildings or crops destroyed or damaged;

(*b*) the difference in value, if any, between the area which is excluded and the area which is added, and

(*c*) disturbance or other loss or expense caused by such exclusion.

Powers of Governor in regard to land in Native Reserves.

16. (1) It shall be lawful for the Governor—

(*a*) at any time to enter upon any land in a Native Reserve and to take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss;

(*b*) at any time to enter upon such land and to set up poles and carry electric lines across such land and to lay sewers, water pipes or electric lines therein, without paying compensation but making good all damage;

(*c*) at any time to enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream on such land, and to construct dams, and to divert any river or stream, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss;

(*d*) by writing under his hand to authorise officers of the Government and Government contractors, their servants and agents, to exercise any of the powers conferred upon him by this section.

(2) Whenever compensation is payable under this section, such compensation shall not in any case exceed, in the case of buildings and crops destroyed or damaged, the fair value of the buildings or crops.

(3) The powers conferred by this section may be exercised before the compensation is paid, but not before compensation has been assessed.

Use of water.

17. Notwithstanding anything contained in either of the two last preceding sections, it shall not be lawful for the Governor, in the exercise of any of the powers thereby conferred to deprive the natives concerned or allow them to be deprived of the use of any water without the prior consent of the Central Board.

No forest area to be declared without the consent of Central Board.

18. Notwithstanding anything contained in the Forest Ordinance no land in a Native Reserve shall be declared to be a forest area or demarcated forest without the prior consent of the Central Board, and no Rules shall be made in respect of any such forest area or demarcated forest without the prior consent of the said Board.

Actions to be brought in name of Chief Native Commissioner.

19. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor respecting land in a Native Reserve, or respecting any lease or licence relating thereto, or the breach of any covenant contained in any such lease or licence, or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name of the Chief Native Commissioner, and he may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any officer of the Native Affairs Department or by any administrative officer duly authorised by him in writing.

Power of officers to enter upon lands in execution of duty.

20. (1) It shall be lawful for the Governor or any person acting under his directions or in the execution of his duty as an officer of the Colony to enter upon any land leased or occupied under a licence under this Ordinance.

(2) Any person who wilfully prevents or attempts to prevent any such person from entering upon land as aforesaid, or who obstructs or hinders such person in the execution of his duty, shall be liable, on conviction before a magistrate,

to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Penalty for unauthorised occupation of land in Native Reserve.

21. Any person who unlawfully occupies land in a Native Reserve, in any manner whatsoever, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Power to make Rules.

22. It shall be lawful for the Governor, with the advice and consent of the Central Board, and subject to the disallowance thereof by His Majesty, to make Rules, which may be of general or special application, for the purpose of carrying this Ordinance into effect and prescribing the fees to be paid for any matter or thing done under this Ordinance.

Saving of existing rights.

23. Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a Native Reserve granted before the commencement of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles were granted as if this Ordinance has not been enacted :

Provided, however, that all land comprised in any such title shall be deemed to be included in the Native Reserve in which it is geographically situated, and all rents accruing therefrom shall be paid in the manner provided for in section 8 (3) of this Ordinance.

Repeal.
Cap. 140
No. 22 of 1926.

24. Subject to the provisions of the last preceding section Part VI of the Crown Lands Ordinance, as amended by the Crown Lands (Amendment) Ordinance, 1926, is hereby repealed.

THE PENAL CODE.

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No. 10 OF 1930.

[26TH MAY, 1930.] **Date of assent.**

An Ordinance to Establish a Code of Criminal Law.

By Proclamation. **Date of commencement.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

PART I.—GENERAL PROVISIONS.

CHAPTER I.

PRELIMINARY.

1. This Ordinance may be cited as " the Penal Code," and hereinafter is referred to as " this Code," and shall commence and come into operation on such date as the Governor may, by proclamation in the Gazette, appoint. **Short title and commencement.**

2. From and after the commencement of this Code, the Indian Penal Code shall cease to be applied to the Colony. Any reference to any provision in the Indian Penal Code in any Ordinance in force at the date of such commencement shall, so far as is consistent with its context, be deemed to be a reference to the corresponding provision in this Code. **Commencement of Code and its operation in lieu of the Indian Penal Code.**

3. Nothing in this Code shall affect— **Saving of certain laws.**

(1) the liability, trial or punishment of a person for an offence against the Common Law or against any other law in force in the Colony other than this Code; or

(2) the liability of a person to be tried or punished for an offence under the provisions of any law in force in the Colony relating to the jurisdiction of the Colonial courts in respect of acts done beyond the ordinary jurisdiction of such courts; or

(3) the power of any court to punish a person for contempt of such court; or

(4) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

(5) any power of His Majesty, or of the Governor as the representative of His Majesty, to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

(6) any of the Statutes, Ordinances, Regulations or Articles for the time being in force for the government of His Majesty's military or naval or air forces, or the military or police forces of the Colony :

Provided that if a person does an act which is punishable under this Code and is also punishable under another Ordinance or Statute of any of the kinds mentioned in this section, he shall not be punished for that act both under that Ordinance or Statute and also under this Code.

CHAPTER II.

INTERPRETATION.

General rule of construction of Code.

4. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

Interpretation.

5. In this Code, unless the context otherwise requires—

" Colony " means the Colony and Protectorate of Kenya;

" court " means a court of competent jurisdiction;

" dangerous harm " means harm endangering life;

" dwelling-house " includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein

of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

" felony " means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment with hard labour for three years or more;

" grievous harm " means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

" harm " means any bodily hurt, disease or disorder whether permanent or temporary;

" judicial proceeding " includes any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person, in which evidence may be taken on oath, or in or before a native tribunal, whether such tribunal takes evidence on oath or not;

" knowingly " used in connexion with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

" local authority " means a local authority established under any Ordinance;

" maim " means the destruction or permanent disabling of any external or internal organ, member or sense;

" misdemeanour " means any offence which is not a felony;

" money " includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

" night " or " night-time " means the interval between half-past six o'clock in the evening and half-past six o'clock in the morning;

" oath " includes affirmation or declaration;

" offence " is an act, attempt or omission punishable by law;

" Ordinance " includes any orders or rule or regulations made under the authority of any Ordinance;

" person " and " owner," and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include His Majesty;

" person employed in the public service " means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely—

(i) any civil office including the office of Governor, the power of appointing a person to which or of removing from which is vested in His Majesty or in the Governor or in the Governor in Council or in any public Commission or Board; or

(ii) any office to which a person is appointed or nominated by Ordinance or Statute or by election; or

(iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding paragraphs of this section; or

(iv) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Ordinance;

and the said term further includes—

(i) a justice of the peace;

(ii) a member of a commission of inquiry appointed under or in pursuance of any Ordinance;

(iii) any person employed to execute any process of a court, including a native tribunal;

(iv) all persons belonging to the military or police forces of the Colony;

(v) all persons in the employment of any government department;

(vi) a person acting as a minister of religion of whatsoever denomination, in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

(vii) a person in the employ of a local authority;

" possession "—(*a*) " be in possession of " or " have in possession " includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person; (*b*) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

" property " includes everything animate or inanimate capable of being the subject of ownership;

" public " refers not only to all persons within the Colony, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

" public way " includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

" public place " or " public premises " includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

" publicly " when applied to acts done, means either (*a*) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or (*b*) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

" Statute " means an Act of the Imperial Parliament or an Act of the Indian Legislature, and includes any orders, rules, regulations, by-laws or other subsidiary legislation made or passed under the authority of any Statute;

" utter " means and includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with, or act upon the thing in question;

" valuable security " includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

" vessel " includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters;

" wound " means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

CHAPTER III.

Territorial Application of This Code.

Extent of jurisdiction of Colonial courts.

6. The jurisdiction of the courts of the Colony for the purposes of this Code extends to every place within the Colony or within three nautical miles of the coast thereof measured from low water mark.

Offences committed partly within and partly beyond the jurisdiction.

7. When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

CHAPTER IV.

General Rules as to Criminal Responsibility.

Ignorance of law.

8. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

Bona fide claim of right.

9. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

Intention: motive.

10. Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention is immaterial so far as regards criminal responsibility.

Mistake of fact.

11. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

Presumption of sanity.

12. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Insanity.

13. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission.

But a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

Intoxication.

14. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of intoxication that he is incapable of understanding what he is doing, or controlling his action, or knowing that he ought not to do the act or make the omission, provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Save as aforesaid, a person shall not, on the ground of intoxication, be deemed to have done any act or made any omission involuntarily, or be exempt from criminal responsibility for any act or omission.

When intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, shall be taken into account for the purpose of ascertaining whether such an intention in fact existed.

Immature age.

15. A person under the age of seven years is not criminally responsible for any act or omission.

A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

Judicial officers.

16. Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

Compulsion.

17. A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do

or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

Necessity.

18. An act or omission which would otherwise be an offence shall be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.

Compulsion by husband.

19. A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

Person not to be punished twice for same offence.

20. A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

CHAPTER V.

PARTIES TO OFFENCES.

Principal offenders.

21. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

(*a*) every person who actually does the act or makes the omission which constitutes the offence;

(*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(*c*) every person who aids or abets another person in committing the offence;

(*d*) any person who counsels or procures any other person to commit the offence.

In the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

Offences committed by joint offenders in prosecution of common purpose.

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Counselling another to commit an offence.

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the council is deemed to have counselled the other person to commit the offence actually committed by him.

CHAPTER VI.

PUNISHMENTS.

Different kinds of punishments.

24. The following punishments may be inflicted by a court :—

(1) Death.

(2) Imprisonment.

(3) Corporal punishment.

(4) Fine.

(5) Forfeiture.

(6) Payment of compensation

(7) Finding security to keep the peace and be of good behaviour; or to come up for judgment.

Sentence of death.

25. (1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

(2) Sentence of death shall not be pronounced on or recorded against any person who in the opinion of the court is under sixteen years of age, but in lieu thereof the court shall sentence such person to be detained during the Governor's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

Imprisonment.

26. (1) All imprisonment shall be with or without hard labour in the discretion of the court, unless the imposition of imprisonment only without hard labour is expressly prescribed by law.

(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

Corporal punishment.

27. (1) A sentence of corporal punishment shall be to be whipped once only. Such whipping shall be with a rod or cane to be approved by the Governor or with such other instrument as the Governor may approve. The sentence shall specify the number of strokes which shall not exceed twenty-four. Where the number of strokes exceeds twelve such order shall be subject to confirmation by the Supreme Court and shall not be carried into effect until such confirmation shall have been received.

(2) No sentence of corporal punishment shall be passed upon any of the following persons :—

(*a*) Females.

(*b*) Males sentenced to death.

(*c*) Males whom the court considers to be more than forty-five years of age.

(3) Whenever a male person under the age of sixteen years is convicted of any offence for which he is liable to imprisonment, the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable.

(4) A sentence of corporal punishment shall not be carried out except in the presence of a Government Medical Officer, or if no such Medical Officer is available, of a European Officer of the Colony, nor before such Medical or other Officer has after examination certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him.

(5) The Medical or other European Officer may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out, if in his opinion the prisoner is unable to bear such sentence without risk of grave or permanent injury.

(6) No sentence of corporal punishment shall be carried out by instalments.

Fines.

28. Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply :—

(i) Where no sum is expressed to which the fine may extend the amount of the fine which may be imposed is unlimited, but shall not be excessive.

(ii) In the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court.

(iii) In the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with fine only in which the offender is sentenced to a fine the court passing sentence may, in its discretion—

(*a*) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment

to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

(*b*) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant: Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(iv) The term of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale :—

Amount.	*Maximum period.*
Not exceeding Sh. 10	7 days.
Exceeding Sh. 10 but not exceeding Sh. 20 ...	14 days.
,, 20 ,, ,, 100 ...	1 month.
,, 100 ,, ,, 400 ...	2 months.
,, 400 ,, ,, 1,000 ...	4 months.
,, 1,000 ...	6 months.

Provided always that where such sum is adjudged to be paid as aforesaid by a native, the scale shall be as follows :—

Amount.	*Maximum period.*
Not exceeding Sh. 1	7 days.
Exceeding Sh. 1 but not exceeding Sh. 2 ...	14 days.
,, 2 ,, ,, 3 ...	1 month.
,, 3 ,, ,, 6 ...	2 months.
,, 6 ,, ,, 20 ...	4 months.
,, 20 ...	6 months.

(v) The imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

Forfeiture.

29. When any person is convicted of an offence under any of the following sections, namely, sections 88, 89, 90, 104 and 105, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to His Majesty of any property which has passed in connexion with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Governor may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

Compensation.

30. Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment.

Costs.

31. A court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof.

Security for keeping the peace.

32. A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term not longer than the longest term for which he might be sentenced to be imprisoned without fine.

Security for coming up for judgment.

33. When a person is convicted of any offence not punishable with death, the court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the court may think fit, conditioned that he shall appear to receive judgment at some future sitting of the court or when called upon.

General punishment for misdemeanours.

34. When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

Sentences cumulative unless otherwise ordered.

35. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death or of corporal punishment, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed in lieu of the former sentence or of any part thereof.

PART II.—CRIMES.

Division I.—Offences Against Public Order.

CHAPTER VII.

Treason and Other Offences Against the Sovereign's Authority.

Treason by the law of England.

36. Any person who compasses, imagines, invents, devises or intends any act, matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, inventing, devising or intending by publishing any printing or writing or by any overt act, or does any act which, if done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of the offence termed treason and shall be liable to suffer death.

Instigating invasion.

37. Any person who instigates any foreigner to invade the Colony with an armed force is guilty of treason, and is liable to the punishment of death.

Concealment of treason.

38. Any person who—

(1) becomes an accessory after the fact to treason; or

(2) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the Governor or a police officer, or use other reasonable endeavours to prevent the commission of the offence,

is guilty of the felony termed misprision of treason, and is liable to imprisonment for life.

Treasonable felonies.

39. Any person who forms an intention to effect any of the following purposes, that is to say—

(*a*) to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom, or of any other of His Majesty's dominions or countries; or

(*b*) to levy war against His Majesty within any part of His Majesty's dominions, or within any country which has been declared to be under his protection or in respect of which His Majesty has accepted a mandate, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, the legislature or legislative authority of any of His Majesty's dominions, or of any country which has been declared to be under his protection or in respect of which His Majesty has accepted a mandate; or

(*c*) to instigate any foreigner to make an armed invasion of any of His Majesty's dominions or of any country which has been declared to be under his protection or mandate,

and manifests such intention by an overt act, or by publishing any printing or writing, is guilty of a felony, and is liable to imprisonment for life.

Promoting native war.

40. Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by, or against any native chief, or with, for, by, or against any band of natives, is guilty of a felony, and is liable to imprisonment for life.

Limitations as to trial for treason, misprision of treason, or treasonable felonies.

41. A person cannot be tried for treason, or for any of the felonies defined in the three last preceding sections, unless the prosecution is commenced within two years after the offence is committed.

Two witnesses necessary.

Nor can a person charged with treason, or with any of such felonies, be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to

one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason or felony.

This section does not apply to cases in which the overt act of treason alleged is the killing of His Majesty, or a direct attempt to endanger the life or injure the person of His Majesty.

Inciting to mutiny.

42. Any person who advisedly attempts to effect any of the following purposes, that is to say—

(*a*) to seduce any person serving in the military forces of the Colony or any member of the police force from his duty and allegiance to His Majesty; or

(*b*) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

(*c*) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a felony, and is liable to imprisonment for life.

Aiding soldiers or policemen in acts of mutiny.

43. Any person who—

(*a*) aids, abets, or is accessory to, any act of mutiny by, or

(*b*) incites to sedition or to disobedience to any lawful order given by a superior officer,

any non-commissioned officer or private of the military forces of the Colony or any police officer, is guilty of a misdemeanour.

Inducing soldiers or policemen to desert.

44. Any person who, by any means whatever, directly or indirectly—

(*a*) procures or persuades or attempts to procure or persuade to desert, or

(*b*) aids, abets, or is accessory to the desertion of, or

(*c*) having reason to believe he is a deserter, harbours or aids in concealing,

any non-commissioned officer or private of the said military forces or any police officer, is guilty of a misdemeanour, and is liable to imprisonment for six months.

Aiding prisoners of war to escape.

45. Any person who—

(1) knowingly and advisedly aids an alien enemy of His Majesty, being a prisoner of war in the Colony, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from the Colony, is guilty of a felony, and is liable to imprisonment for life;

(2) negligently and unlawfully permits the escape of any such person as is mentioned in the last preceding paragraph, is guilty of a misdemeanour.

Definition of overt act.

46. In the case of any of the offences defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

Seditious conspiracy, libel and publications.

47. Any person who—

(*a*) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them; or

(*b*) prints or publishes any words or writing with a seditious intention; or

(*c*) sells, offers for sale, distributes or has in his possession any newspaper, book or document containing any seditious words or writing, or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony; or

(*d*) imports into the Colony any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony,

is guilty of an offence and is liable to imprisonment for two years. If he has been previously convicted of any such offence he is liable to imprisonment for seven years.

Possessing seditious publications.

48. (1) Any person to whom any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony has been sent without his knowledge or privity shall forthwith deliver to the officer in charge of the nearest police station or to the nearest administrative officer such newspaper, book or document, and in default thereof is guilty of an offence and is liable to imprisonment for one year.

(2) A person who has complied with the provisions of sub-section (1) of this section or has been convicted of an offence under such sub-section shall not be liable to be convicted of an offence under paragraph (*c*) of section 47 of this Code.

Evidence necessary for conviction.

49. A person cannot be convicted of any offences against section 47 or section 48 on the uncorroborated testimony of one witness.

Forfeiture of seditious publications.

50. A court on convicting any person of an offence under section 47 or section 48 shall order any seditious or prohibited newspaper, book or document to be forfeited to His Majesty.

Powers of detention and examination of suspected packages, etc.

51. Any of the following officers, viz.—

any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;

any officer of the Customs Department not below the rank of Examining Officer;

any police officer not below the rank of European Police Constable;

any other officer authorised in that behalf by the Governor,

may detain, open and examine any package or article which he suspects to contain any newspaper, book or document which it is an offence under section 47 or section 48 to print, publish, import, sell, offer for sale, distribute or possess, and during such examination may detain any person importing, distributing or posting such package or article, or in whose possession such package or article is found. If any such newspaper, book or document is found in such package or article, the whole package or article may be impounded and retained by the

Powers of arrest.

officer, and the person importing, distributing or posting it, or in whose possession it is found, may be arrested without warrant and proceeded against for the commission of an offence under section 47 or section 48.

Power of Governor in Council to declare documents, etc., to be seditious publications.

52. The Governor in Council may by proclamation declare any newspaper, book or document to be a seditious publication.

Power to prohibit importation of documents.

53. The Governor in Council may by proclamation prohibit the importation into the Colony of any newspaper, book or document.

Interpretation.

54. For the purposes of the seven last preceding sections—

" newspaper " means any periodical work containing public news or comments on public news, and includes any part of such work or extract therefrom ;

" book " includes every volume, part or division of a volume, pamphlet or leaflet in any language, and every sheet of music, map, chart or plan separately printed or lithographed, and any part of or extract from any such volume, pamphlet, leaflet, sheet of music, map, chart or plan ;

" document " includes any painting, drawing or photograph or other visible representation.

Seditious intentions defined.

55. For the purposes of the eight last preceding sections a seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors or the Government of the Colony, as by law established, or against the administration of justice ; or to excite the inhabitants of the Colony to attempt to procure the alteration otherwise than by lawful means of any matter in the Colony as by law established ; or to raise discontent or disaffection amongst the inhabitants of the Colony ; or to promote feelings of ill-will and hostility between different classes of the population of the Colony :

Innocent intention.

Provided that it shall be lawful for any person—

(*a*) to endeavour in good faith to show that the Sovereign has been misled or mistaken in any of his measures ; or

(*b*) to point out in good faith errors or defects in the government or constitution of the Colony as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or

(*c*) to excite in good faith the inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or

(*d*) to point out in good faith, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony.

Unlawful oaths to commit capital offences.

56. Any person who—

(1) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(2) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony, and is liable to imprisonment for life.

Other unlawful oaths to commit offences.

57. Any person who—

(1) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—

(*a*) to engage in any mutinous or seditious enterprise;

(*b*) to commit any offence not punishable with death;

(*c*) to disturb the public peace;

(*d*) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;

(*e*) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

(*f*) not to inform or give evidence against any associate, confederate or other person;

(*g*) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(2) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony, and is liable to imprisonment for seven years.

Compulsion, how far a defence.

58. A person who takes any such oath or engagement as is mentioned in the two last preceding sections cannot set up as a defence that he was compelled to do so, unless within fourteen days after taking it, or, if he is prevented by actual force or sickness, within fourteen days after the termination of such prevention, he declares by information on oath before a magistrate, or, if he is on actual service in the military forces of the Colony or in the police force, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where and the time when, the oath or engagement was administered or taken.

Unlawful drilling.

59. (1) Any person who—

(*a*) without the permission of the Governor trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or

(*b*) is present at any meeting or assembly of persons, held without the permission of the Governor, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements or evolutions,

is guilty of a felony, and is liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the Governor, is trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour.

Publishing false reports.

60. Any person who makes, publishes or circulates any statement, rumour or report—

(*a*) with intent to cause, or which is likely to cause, any person employed in the public service to disregard or fail in his duty; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State, or against the public tranquillity; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit an offence against any other class or community,

is guilty of a misdemeanour, and is liable to imprisonment for two years:

Provided that it shall not amount to an offence under this section when the person making, publishing or circulating any statement, rumour or report has reasonable grounds to believe that the same is true, and makes, publishes or circulates it without any such intent as aforesaid.

CHAPTER VIII.

Offences Affecting Relations with Foreign States and External Tranquillity.

Defamation of foreign princes.

61. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador, or other foreign dignitary with intent to disturb peace and friendship between the United Kingdom or the Colony and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanour.

Foreign enlistment.

62. Any person commits a misdemeanour who does any of the following acts without the licence of His Majesty under his sign manual, or signified by Order in Council, or by proclamation, that is to say—

(*a*) who prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(*b*) who, being a British subject, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a British subject or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or

(*c*) who, being a British subject, quits or goes on board any vessel with a view of quitting the Colony, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, induces any other person to quit or to go on board any vessel with a view of quitting the Colony with the like intent; or

(*d*) who, being the master or owner of any vessel, knowingly either takes on board, or engages to take on board, or has on board such vessel, any illegally enlisted person; or

(*e*) who, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any vessel, or issues or delivers any commission for any vessel:

Provided that a person building, causing to be built, or equipping a vessel in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as

aforesaid, is not liable to any of the penalties specified in this section in respect of such building or equipping if—

(i) upon a proclamation of neutrality being issued by His Majesty he forthwith gives notice to the Governor or the Secretary of State that he is so building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Governor or the Secretary of State; and

(ii) he gives such security, and takes and permits to be taken such other measures, if any, as the Governor or the Secretary of State may prescribe for ensuring that such vessel shall not be despatched, delivered, or removed without the licence of His Majesty until the termination of such war as aforesaid.

Piracy.

63. Any person who is guilty of piracy or any crime connected with or relating or akin to piracy shall be liable to be tried and punished according to the law of England for the time being in force.

CHAPTER IX.

Unlawful Assemblies, Riots and Other Offences Against Public Tranquillity.

Unlawful society.

64. (1) A society includes any combination of ten or more persons whether the society be known by any name or not.

(2) A society is an unlawful society—

(i) if formed for any of the following purposes :—

(*a*) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Colony; or

(*b*) killing or injuring or inciting to the killing or injuring of any person; or

(*c*) destroying or injuring or inciting to the destruction or injuring of any property; or

(*d*) subverting or promoting the subversion of the Government or of its officials; or

(*e*) committing or inciting to acts of violence or intimidation; or

(*f*) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or

(*g*) disturbing or inciting to the disturbance of peace and order in any part of the Colony; or

(ii) if declared by an order of the Governor in Council to be a society dangerous to the good government of the Colony.

Managing unlawful society.

65. Any person who manages or assists in the management of an unlawful society is guilty of a felony and is liable to imprisonment for seven years.

Being member of unlawful society.

66. Any person who—

(*a*) is a member of an unlawful society; or

(*b*) knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control,

is guilty of a felony, and is liable to imprisonment for three years.

Prosecutions under sections 65 and 66.

67. (1) A prosecution for an offence under the two last preceding sections shall not be instituted except with the consent of the Governor:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Governor to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) In any prosecution for an offence under the two last preceding sections it shall not be necessary to prove that the society consisted of ten or more members; but it shall be sufficient to prove the existence of a combination of persons, and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to ten.

(3) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of the society.

(4) Any person who has in his possession or custody or under his control any of the insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless and until the contrary is proved, to be a member of the society.

Power of entry, arrest, search, etc.

68. Any peace officer, and any police officer authorised in writing by a peace officer, may enter with or without assistance any house or building or into any place in which he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and to arrest or cause to be arrested all persons found therein and to search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which he may have reasonable cause to believe to belong to any unlawful society, or to be in any way connected with the purpose of the meeting.

For the purposes of this section the expression " peace officer " means any magistrate or any police officer not below the rank of Assistant Superintendent.

Declaration by Governor in Council.

69. (1) When a society is declared to be an unlawful society by an order of the Governor in Council, the following consequences shall ensue :—

(*a*) the property of the society within the Colony shall forthwith vest in an officer appointed by the Governor;

(*b*) the officer appointed by the Governor shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of the winding up, if there shall then be any surplus assets shall prepare and submit to the Governor a scheme for the application of such surplus assets;

(*c*) such scheme, when submitted for approval, may be amended by the Governor in such way as he shall think proper in the circumstances of the case;

(*d*) the approval of the Governor to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the Governor, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed;

(*e*) for the purpose of the winding up, the officer appointed by the Governor shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realisation thereof.

(2) The Governor may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of this section for such period as to him shall seem expedient.

(3) The provisions of sub-section (1) shall not apply to any property seized at any time under section 68.

Forfeiture of insignia, etc.

70. Subject to the provisions of the last preceding section, the insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited to His Majesty, and shall be dealt with in such manner as the Governor may direct.

Definitions—

71. When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably

Unlawful assembly.

to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

Riot.

When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment of unlawful assembly.

72. Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and is liable to imprisonment without hard labour for one year.

Punishment of riot.

73. Any person who takes part in a riot is guilty of a misdemeanour.

Making proclamation for rioters to disperse.

74. Any magistrate or, in his absence, any commissioned or non-commissioned officer of police not below the rank of European constable, or any commissioned officer in the military forces of the Colony, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the King's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Dispersion of rioters after proclamation made.

75. If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

Rioting after proclamation.

76. If proclamation is made, commanding the persons engaged in a riot, or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of such proclamation, takes or continues to take part in the riot or assembly, is guilty of a felony, and is liable to imprisonment for five years.

Preventing or obstructing the making of proclamation.

77. Any person who forcibly prevents or obstructs the making of such proclamation as is in section 74 mentioned, is guilty of a felony, and is liable to imprisonment for ten years; and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for five years.

Rioters demolishing buildings, etc.

78. Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy any building, railway, machinery or structures are guilty of a felony, and each of them is liable to imprisonment for life.

Rioters injuring buildings, machinery, etc.

79. Any persons who, being riotously assembled together, unlawfully damage any of the things in the last preceding section mentioned, are guilty of a felony, and each of them is liable to imprisonment for seven years.

Riotously interfering with railway, vehicle or vessel.

80. All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any railway, vehicle or vessel with intent to do so.

Going armed in public.

81. Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour, and his arms may be forfeited.

Forcible entry.

82. Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, is guilty of the misdemeanour termed forcible entry.

It is immaterial whether he is entitled to enter on the land or not, provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

Forcible detainer.

83. Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of the misdemeanour termed forcible detainer.

Affray.

84. Any person who takes part in a fight in a public place is guilty of a misdemeanour, and is liable to imprisonment for one year.

Challenge to fight a duel.

85. Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour.

Threatening violence.

86. Any person who—

(1) with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or

(2) with intent to alarm any person in a dwelling-house, discharges loaded firearms or commits any other breach of the peace,

is guilty of a misdemeanour, and is liable to imprisonment for one year.

If the offence is committed in the night the offender is liable to imprisonment for two years.

Assembling for the purpose of smuggling.

87. Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs, are guilty of a misdemeanour, and each of them is liable to a fine not exceeding one hundred pounds or to imprisonment for six months.

Division II.—Offences Against the Administration of Lawful Authority.

CHAPTER X.

Corruption and the Abuse of Office.

88. Any person who—

Official corruption.

(1) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(2) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony, and is liable to imprisonment for seven years.

Extortion by public officers.

89. Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Public officers receiving property to show favour.

90. Any person who, being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, is guilty of a misdemeanour, and is liable to imprisonment for six months.

Officers charged with administration of property of a special character or with special duties.

91. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour, and is liable to imprisonment for one year.

False claims by officials.

92. Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the pur-

pose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

Abuse of office.

93. Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour.

If the act is done or directed to be done for purposes of gain, he is guilty of a felony, and is liable to imprisonment for three years.

A prosecution for any offence under this or either of the two last preceding sections shall not be instituted except by or with the sanction of the Attorney General.

False certificates by public officers.

94. Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular is guilty of a misdemeanour.

False assumption of authority.

95. Any person who—

(1) not being a judicial officer, assumes to act as a judicial officer; or

(2) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

(3) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he is not, and knows that he is not, in fact, so authorised,

is guilty of a misdemeanour.

96. Any person who—

Personating public officers.

(1) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(2) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour, and is liable to imprisonment for three years.

CHAPTER XI.

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.

Perjury and subornation of perjury.

97. (1) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed perjury.

It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assent to the forms and ceremonies actually used.

It is immaterial whether the false testimony is given orally or in writing.

It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

Subornation.

(2) Any person who aids, abets, counsels, procures or suborns another person to commit perjury is guilty of the misdemeanour termed subornation of perjury.

Punishment of perjury.

98. Any person who commits perjury or suborns perjury is liable to imprisonment for seven years.

Evidence on charge of perjury.

99. A person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Fabricating evidence.

100. Any person who, with intent to mislead any tribunal in any judicial proceeding—

(1) fabricates evidence by any means other than perjury or subornation of perjury; or

(2) knowingly makes use of such fabricated evidence,

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

False swearing.

101. Any person who swears falsely or makes a false affirmation or declaration before any person authorised to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanour.

Deceiving witnesses.

102. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour.

Destroying evidence.

103. Any person who, knowing that any book, document or other thing of any kind is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour.

Conspiracy to defeat justice and interference with witnesses.

104. Any person commits a misdemeanour who—

(*a*) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or

(*b*) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or

(*c*) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal.

Compounding felonies.

105. Any person who asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of a misdemeanour.

Compounding penal actions.

106. Any person who, having brought, or under pretence of bringing, an action against another person upon a penal Ordinance or Statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour.

Advertisements for stolen property.

107. Any person who—

(1) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(2) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

(3) prints or publishes any such offer,

is guilty of a misdemeanour.

Offences relating to judicial proceedings.

108. (1) Any person who—

(*a*) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(*b*) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended, refuses to be sworn or to make an affirmation or,

having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(*c*) causes an obstruction or disturbance in the course of a judicial proceeding; or

(*d*) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(*e*) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(*f*) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or

(*g*) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(*h*) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

(*i*) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken,

is guilty of an offence, and is liable to imprisonment for three months.

(2) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the Supreme Court to punish for contempt of court.

CHAPTER XII.

Rescues and Escapes and Obstructing Officers of Court of Law.

Rescue.

109. Any person, who by force rescues or attempts to rescue from lawful custody any other person—

(*a*) is, if such last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for

life, guilty of a felony, and is liable to imprisonment for life; and

(*b*) is, if such other person is imprisoned on a charge or under sentence for any offence other than those specified above, guilty of a felony, and is liable to imprisonment for seven years; and

(*c*) is, in any other case, guilty of a misdemeanour.

If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

Escape.

110. Any person who, being in lawful custody, escapes from such custody, is guilty of a misdemeanour.

Aiding prisoners to escape.

111. Any person who—

(1) aids a prisoner in escaping or attempting to escape from lawful custody; or

(2) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

is guilty of a felony, and is liable to imprisonment for seven years.

Removal, etc., of property under lawful seizure.

112. Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals, or disposes of such property, is guilty of a felony, and is liable to imprisonment for three years.

Obstructing court officers.

113. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of a misdemeanour, and is liable to imprisonment for one year.

CHAPTER XIII.

Miscellaneous Offences Against Public Authority.

Frauds and breaches of trust by persons employed in the public service.

114. Any person employed in the public service who, in the the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a misdemeanour.

Neglect of official duty.

115. Every person employed in the public service who wilfully neglects to perform any duty which he is bound either by common law or by Statute or Ordinance to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary courage might be expected to face, is guilty of a misdemeanour.

Disobedience of statutory duty.

116. Everyone who wilfully disobeys any Statute or Ordinance by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, is guilty of a misdemeanour, and is liable, unless it appears from the Statute or Ordinance that it was the intention of the Legislature to provide some other penalty for such disobedience, to imprisonment for two years.

Disobedience of lawful orders.

117. Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, is guilty of a misdemeanour, and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.

Division III.—Offences Injurious to the Public in General.

CHAPTER XIV.

Offences Relating to Religion.

Insult to religion of any class.

118. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

Disturbing religious assemblies.

119. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.

Trespassing on burial places.

120. Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is

likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture, or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

Uttering words with the intent to wound religious feelings.

121. Any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

CHAPTER XV.

Offences Against Morality.

Definition of rape.

122. Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape.

Punishment of rape.

123. Any person who commits the offence of rape is liable to be punished with death or with imprisonment for life, or for any term not less than three years, with or without corporal punishment.

Attempt.

124. Any person who attempts to commit rape is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Abduction.

125. Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years.

Abduction of girls under sixteen.

126. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour.

Indecent assaults on females.

127. (1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of sixteen years to prove that she consented to the act of indecency :

Provided that it shall be a sufficient defence to any charge under this sub-section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Indecently insulting or annoying females.

(3) Any person who is found in any dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the curtilage of such dwelling-house with intent indecently to insult or annoy any female inmate of such dwelling-house is guilty of a misdemeanour, and is liable to imprisonment for one year.

Defilement of girls under 16 years of age.

128. (1) Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Attempt.

(2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment :

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Defilement of idiots or imbeciles.

129. Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Procuration.

130. Any person who—

(1) procures or attempts to procure any girl or woman under the age of twenty-one years, not being a common prostitute or of known immoral character, to have unlawful carnal connexion, either in the Colony or elsewhere, with any person or persons; or

(2) procures or attempts to procure any woman or girl to become, either in the Colony or elsewhere, a common prostitute; or

(3) procures or attempts to procure any woman or girl to leave the Colony, with intent that she may become an inmate of or frequent a brothel elsewhere; or

(4) procures or attempts to procure any woman or girl to leave her usual place of abode in the Colony (such place not being a brothel), with intent that she may for the purposes of prostitution become an inmate of or frequent a brothel either in the Colony or elsewhere,

is guilty of a misdemeanour, and, subject to the provisions of section 27, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Procuring defilement of woman by threats or fraud or administering drugs.

131. Any person who—

(1) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connexion, either in the Colony or elsewhere; or

(2) by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either in the Colony or elsewhere; or

(3) applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing, with intent

to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl,

is guilty of a misdemeanour: Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Householder, etc., permitting defilement of girl under 13 years on his premises.

132. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a felony, and is liable to imprisonment for five years:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Householder permitting defilement of girl under 16 years of age on his premises.

133. Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl above the age of thirteen years and under the age of sixteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a misdemeanour:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Detention with intent or in brothel.

134. Any person who detains any woman or girl against her will—

(1) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(2) in any brothel,

is guilty of a misdemeanour.

Constructive detention by withholding clothes.

When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Power of search.

135. If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of any woman or girl or other person who, in the opinion of the magistrate, is acting bona fide in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising the person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a magistrate; and the magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally; and—

(*a*) either is under the age of sixteen years; or

(*b*) if she is of or over the age of sixteen years and under the age of eighteen years, is so detained against her will or against the will of her father or mother or of any person having the lawful care or charge of her; or

(*c*) if she is of or over the age of eighteen years and is so detained against her will.

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove such woman therefrom :

Provided always that every warrant issued under this section authorising the search for any woman or girl in any house, building or other place occupied by a non-native shall be addressed to and executed by a European police officer.

Male person living on earnings of prostitution or persistently soliciting.

136. (1) Every male person who—

(*a*) knowingly lives wholly or in part on the earnings of prostitution; or

(*b*) in any public place persistently solicits or importunes for immoral purposes,

is guilty of a misdemeanour. In the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

Woman living on earnings of prostitution or aiding, etc., for gain prostitution of another woman.

137. Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanour.

Suspicious premises.

138. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels.

139. Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution is guilty of a misdemeanour.

Conspiracy to defile.

140. Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony, and is liable to imprisonment for three years, with or without corporal punishment.

Attempts to procure abortion.

141. Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

The like by woman with child.

142. Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

Supplying drugs or instruments to procure abortion.

143. Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

Knowledge of age of female immaterial.

144. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

Unnatural offences.

145. Any person who—

(1) has carnal knowledge of any person against the order of nature; or

(2) has carnal knowledge of an animal; or

(3) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Attempt to commit unnatural offences.

146. Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

White woman having connexion with natives

147. (1) Any white woman who voluntarily permits any native to have unlawful carnal connexion with her is guilty of a misdemeanour, and is liable to imprisonment for five years.

(2) Any white woman who entices or solicits by words, signs, or in any other way whatsoever, any native to have unlawful carnal connexion with her is guilty of a misdemeanour.

(3) Any native having or attempting to have unlawful carnal connexion with any white woman under circumstances not amounting to rape or attempted rape is guilty of a misdemeanour, and is liable to imprisonment for five years, with or without corporal punishment.

(4) Any person who procures or attempts to procure any white woman for the purpose of having unlawful carnal connexion with any native is guilty of a felony, and is liable to imprisonment for ten years, with or without corporal punishment.

(5) The owner or occupier of any house or place who knowingly permits unlawful carnal connexion in contravention of this section to take place therein is guilty of a misdemeanour, and is liable to imprisonment for five years.

(6) For the purposes of this section—

the term " white woman " means a female of any age of European origin or descent;

the term " native " means any native of Africa not being of European or Asiatic origin or descent, and includes an Arab and a Somali.

Incest by males.

148. (1) Any male person who has carnal knowledge of a female person, who is to his knowledge his granddaughter, daughter, sister or mother, is guilty of a felony, and is liable to imprisonment for five years :

Provided that if it is alleged in the information or charge and proved that the female person is under the age of thirteen years, the offender shall be liable to imprisonment for life.

Consent immaterial.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

Attempt.

(3) If any male person attempts to commit any such offence as aforesaid he is guilty of a misdemeanour.

Order for guardianship.

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period :

Provided that the Supreme Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

Incest by females.

149. Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother or son, as the case may be) is guilty of a felony, and is liable to imprisonment for five years.

Test of relationship.

150. In the two last preceding sections the expressions " brother " and " sister " respectively include half-brother and half-sister, and the provisions of the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

Conviction of incest lawful on charge of rape.

151. (1) If, on the trial of any information or charge for rape, the court or jury is or are satisfied that the defendant is guilty of an offence under section 148 of this Code, but is or are not satisfied that the defendant is guilty of rape, the

court or jury, as the case may be, may acquit the defendant of rape, and find him guilty of an offence under section 148, and he shall be liable to be punished accordingly.

Conviction of unlawful carnal knowledge on charge of incest.

(2) If, on the trial of any information or charge for an offence under section 148 of this Code, the court or jury is or are satisfied that the defendant is guilty of any offence under sections 128 or 129, but is or are not satisfied that the defendant is guilty of an offence under section 148, the court or jury may acquit the defendant of an offence under section 148 and find him guilty of an offence under sections 128 or 129, and he shall be liable to be punished accordingly.

Sanction of Attorney General.

152. No prosecution for an offence under sections 148 or 149 of this Code shall be commenced without the sanction of the Attorney General.

CHAPTER XVI.

Offences Relating to Marriage and Domestic Obligations.

Fraudulent pretence of marriage.

153. Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, is guilty of a felony, and is liable to imprisonment for ten years.

Bigamy.

154. Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for five years : Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

Marriage ceremony fraudulently gone through without lawful marriage.

155. Any person who dishonestly or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony, and is liable to imprisonment for five years.

Desertion of children.

156. Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of fourteen years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a misdemeanour.

Neglecting to provide food, etc., for children.

157. Any person who, being the parent or guardian or other person having the lawful care or charge of any child of tender years and unable to provide for itself, refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding and other necessaries for such child, so as thereby to injure the health of such child, is guilty of a misdemeanour.

Master not providing for servants or apprentices.

158. Any person who, being legally liable, either as master or mistress, to provide for any apprentice or servant necessary food, clothing or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured, is guilty of a misdemeanour.

Child stealing.

159. Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of fourteen years, of the possession of such child,

(1) forcibly or fraudulently takes or entices away, or detains the child ; or

(2) receives or harbours the child, knowing it to have been so taken or enticed away or detained.

is guilty of a felony, and is liable to imprisonment for seven years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

CHAPTER XVII.

NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE.

Common nuisance.

160. Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance, and is liable to imprisonment for one year.

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Gaming houses.

161. (1) Any person being the owner or occupier, or having the use of, any house, room or place, who shall open, keep or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house, room or place, shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room or place opened, kept or used for the purpose aforesaid, is said to keep a common gaming house.

(2) In this section " unlawful gaming " means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed, or against whom the other players stake, play or bet.

(3) Any person who keeps a common gaming house is guilty of a misdemeanour.

(4) Any person other than the persons mentioned in subsection (1) who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming, and is guilty of a misdemeanour, and is liable to a fine of five pounds for the first offence, and for each subsequent offence to a fine of twenty pounds or imprisonment for three months, or to both such fine and imprisonment.

Betting houses.

162. Any house, room or place which is used for any of the purposes following, that is to say—

(1) for the purpose of bets being made therein between persons resorting to the place and—

(*a*) the owner, occupier, or keeper of the place, or any person using the place; or

(*b*) any person procured or employed by or acting for or on behalf of any such owner, occupier or keeper, or person using the place; or

(*c*) any person having the care or management, or in any manner conducting the business of the place; or

(2) for the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier, or keeper, or person using the place, as, or for the consideration—

(*a*) for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise; or

(*b*) for securing the paying or giving by some other person of any money or other property on any such event or contingency,

is called a common betting house.

Any person who, being the owner or occupier of any house, room or place, knowingly and wilfully permits it to be opened, kept or used as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, is guilty of a misdemeanour, and is liable to imprisonment for one year:

Totalisator.

Provided always that nothing herein contained shall make illegal the use of a totalisator by a race club, gymkhana club or sports club recognised by the Government at any public meeting, with the approval in each case of the Commissioner of Police. In this proviso, "totalisator" means and includes the instrument, machine or contrivance commonly known as the totalisator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

Lotteries.

163. (1) Any person who opens, keeps, or uses any place for carrying on a lottery not authorised by the Commissioner of Police is guilty of a misdemeanour.

(2) Any person who prints or publishes or causes to be printed or published, any advertisement or other notice of or relating to any lottery not so authorised, or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery not so authorised, is liable to a fine of fifty pounds.

(3) In this section the term "lottery" includes any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel or trained animal, or otherwise howsoever.

(4) When any person is convicted of an offence under this section the court may, in addition to, or in lieu of, any penalty which may be imposed, order the forfeiture to His Majesty of any instrument or thing used in connexion with the lottery concerning which the conviction has taken place.

Keeper of premises defined.

164. Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in sections 161, 162 and 163 is to be taken to be the keeper thereof, whether he is or is not the real keeper.

165. Any person who—

Traffic in obscene publications.

(1) sells, lets to hire, distributes or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or

(2) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that any such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or

(3) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the

purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited, or in any manner put into circulation; or

(4) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or

(5) exhibits any indecent show or performance in any public place,

is guilty of a misdemeanour.

Every person committing any such misdemeanour as aforesaid forfeits to His Majesty all obscene books, pamphlets, papers, drawings, paintings, representations or figures or any other obscene objects whatsoever connected with the committing of such misdemeanour.

Idle and disorderly persons.

166. The following persons—

(1) every common prostitute behaving in a disorderly or indecent manner in any public place;

(2) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(3) every person playing at any game of chance for money or money's worth in any public place;

(4) every person who in any public place conducts himself in a manner likely to cause a breach of the peace; and

(5) every person who without lawful excuse does any indecent act in any public place,

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.

Rogues and vagabonds.

167. The following persons—

(1) every person convicted of an offence under the last preceding section after having been previously convicted as an idle and disorderly person;

(2) every person wandering abroad and endeavouring by the exposure of wounds or deformation to obtain or gather alms;

(3) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(4) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;

(5) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose;

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year, with or without corporal punishment.

Wearing of uniform without authority prohibited.

168. (1) Any person who, not being a person serving in His Majesty's naval, military or air forces, or in any constabulary or police force in the United Kingdom, or in any British possession, or in any country under the protection of His Majesty, or in respect of which His Majesty has accepted a mandate, wears without the permission of the Governor the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform, is guilty of a misdemeanour, and is liable to imprisonment for one month or to a fine of ten pounds:

Provided that nothing in this section shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of any bona fide military representation.

Bringing contempt on uniform.

(2) Any person who unlawfully wears the uniform of any of the forces aforesaid, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or in such circumstances

as to be likely to bring contempt on that uniform, or employs any other person so to wear such uniform or dress, is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds.

Importation and sale of uniform, etc., without authority prohibited.

(3) Any person who, not being in the service of the Colony or having previously received the written permission of the Governor so to do, imports or sells or has in his possession for sale any such uniform as aforesaid, or the buttons or badges appropriate thereto, is guilty of a misdemeanour, and is liable to imprisonment for six months, or to a fine of one hundred pounds.

Forfeiture of uniform, etc., on conviction.

(4) When any person shall have been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the Governor shall otherwise order.

Offences against public health—Negligent act likely to spread infection of disease dangerous to life.

169. Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour.

Adulteration of food or drink intended for sale.

170. Any person who subjects any article of food or drink to such treatment as to make such article noxious as food or drink or of less nutritive value, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, is guilty of a misdemeanour.

Sale of noxious food or drink.

171. Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, is guilty of a misdemeanour.

Adulteration of drugs.

172. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, is guilty of a misdemeanour.

Sale of adulterated drugs.

173. Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of a misdemeanour.

Fouling water.

174. Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour.

Fouling air.

175. Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

Offensive trades.

176. Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and is liable to be punished as for a common nuisance.

CHAPTER XVIII.

DEFAMATION.

Definition of libel.

177. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed "libel."

Definition of defamatory matter.

178. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead :

Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Attorney General.

Definition of publication.

179. (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Definition of unlawful publication.

180. Any publication of defamatory matter concerning a person is unlawful within the meaning of this chapter, unless (*a*) the matter is true and it was for the public benefit that it should be published, or (*b*) it is privileged on one of the grounds hereafter mentioned in this chapter.

Cases in which publication of defamatory matter is absolutely privileged.

181. (1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—

(*a*) if the matter is published by the Governor, or by the Executive Council or the Legislative Council, in any official document or proceeding; or

(*b*) if the matter is published in the Executive Council or the Legislative Council by the Governor or by any Member of such Councils; or

(*c*) if the matter is published by order of the Governor in Council; or

(*d*) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or

(*e*) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge or magistrate or commissioner or counsel or solicitor or juror or witness or party thereto; or

(*f*) if the matter published is in fact a fair report of anything said, done or published in the Executive Council or the Legislative Council; or

(*g*) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith: Provided that nothing in this section shall exempt a person from any liability to punishment under any other chapter of this Code or under any other Ordinance or Statute in force within the Colony.

Cases in which publication of defamatory matter is conditionally privileged.

182. A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely—

(1) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court: Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral, or blasphemous, the publication thereof shall not be privileged; or

(2) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the last preceding section; or

(3) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or

(4) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

(5) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or

(6) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or

(7) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or

(8) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or

(9) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

Explanation as to good faith.

183. A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section, if it is made to appear either—

(*a*) that the matter was untrue, and that he did not believe it to be true; or

(*b*) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(*c*) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

Presumption as to good faith.

184. If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution.

Division IV.—Offences Against the Person.

CHAPTER XIX.

Murder and Manslaughter.

Manslaughter.

185. Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

Murder.

186. Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

Punishment of murder.

187. Any person convicted of murder shall be sentenced to death.

Punishment of manslaughter.

188. Any person who commits the felony of manslaughter is liable to imprisonment for life.

Malice aforethought.

189. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(*a*) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(*b*) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(*c*) an intent to commit a felony;

(*d*) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

Presumption that killing is murder.

190. Any person who is shown to have caused the death of another is presumed to have wilfully murdered him unless the circumstances are such as to raise a contrary presumption.

The burden of proving circumstances of excuse, justification, or extenuation is upon the person who is shown to have caused the death of another.

Killing on provocation.

191. When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only.

Provocation defined.

192. The term " provocation " means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

Causing death defined.

193. A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases—

(*a*) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

(*b*) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;

(*c*) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;

(*d*) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

(*e*) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

When child deemed to be a person.

194. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

Limitation as to time of death.

195. A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

CHAPTER XX.

Duties Relating to the Preservation of Life and Health.

Responsibility of person who has charge of another.

196. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

Duty of head of family.

197. It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries

of life for such child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of masters.

198. It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of persons doing dangerous acts.

199. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

Duty of persons in charge of dangerous things.

200. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

CHAPTER XXI.

Offences Connected with Murder and Suicide.

Attempt to murder.

201. Any person who—

(1) attempts unlawfully to cause the death of another; or

(2) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a felony, and is liable to imprisonment for life.

Attempt to murder by convict.

202. Any person who, being under sentence of imprisonment for three years or more, attempts to commit murder, is liable to imprisonment for life, with or without corporal punishment.

Accessory after the fact to murder.

203. Any person who becomes an accessory after the fact to murder is guilty of a felony, and is liable to imprisonment for seven years.

Written threats to murder.

204. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person is guilty of a felony, and is liable to imprisonment for seven years.

Conspiracy to murder.

205. Any person who conspires with any other person to kill any person, whether such person is in the Colony or elsewhere, is guilty of a felony, and is liable to imprisonment for fourteen years.

Aiding suicide.

206. Any person who—

(1) procures another to kill himself; or

(2) counsels another to kill himself and thereby induces him to do so; or

(3) aids another in killing himself,

is guilty of a felony, and is liable to imprisonment for life.

Attempting suicide.

207. Any person who attempts to kill himself is guilty of a misdemeanour.

Concealing the birth of children.

208. Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at, or after its birth, is guilty of a misdemeanour.

CHAPTER XXII.

Offences Endangering Life and Health.

Disabling in order to commit felony or misdemeanour.

209. Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, renders or attempts to render any person incapable of resistance, is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Stupefying in order to commit felony or misdemeanour.

210. Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, administers or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a felony, and is liable to imprisonment for life.

Acts intended to cause grievous harm or prevent arrest.

211. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(1) unlawfully wounds or does any grievous harm to any person by any means whatever; or

(2) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or

(3) unlawfully causes any explosive substance to explode; or

(4) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(5) causes any such substance or thing to be taken or received by any person; or

(6) puts any corrosive fluid or any destructive or explosive substance in any place; or

(7) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony, and is liable to imprisonment for life.

Preventing escape from wreck.

212. Any person who unlawfully—

(1) prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or

(2) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of a felony and is liable to imprisonment for life.

Intentionally endangering safety of persons travelling by railway.

213. Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not—

(1) places anything on the railway; or

(2) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or

(3) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway; or

(4) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or

(5) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Grievous harm.

214. Any person who unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years.

Attempting to injure by explosive substances.

215. Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Maliciously administering poison with intent to harm.

216. Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him grievous harm, is guilty of a felony, and is liable to imprisonment for fourteen years.

Wounding and similar acts.

217. Any person who—

(1) unlawfully wounds another; or

(2) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,

is guilty of a felony and is liable to imprisonment for three years.

Failure to supply necessaries.

218. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony, and is liable to imprisonment for three years.

Surgical operation.

219. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Excess of force.

220. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Consent.

221. Notwithstanding anything contained in section 220, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused.

CHAPTER XXIII.

Criminal Recklessness and Negligence.

Reckless and negligent acts

222. Any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person—

(*a*) drives any vehicle or rides on any public way; or

(*b*) navigates, or takes part in the navigation or working of, any vessel; or

(*c*) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession; or

(*d*) omits to take precautions against any probable danger from any animal in his possession; or

(*e*) gives medical or surgical treatment to any person whom he has undertaken to treat; or

(*f*) dispenses, supplies, sells, administers, or gives away any medicine or poisonous or dangerous matter; or

(*g*) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge; or

(*h*) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his possession,

is guilty of a misdemeanour.

Other negligent acts causing harm.

223. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person, is guilty of a misdemeanour, and is liable to imprisonment for six months.

Endangering safety of persons travelling by railway.

224. Any person who, by any unlawful act or omission not specified in section 213 of this Code, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour.

Exhibition of false light, mark or buoy.

225. Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, is liable to imprisonment for seven years.

Conveying person by water for hire in unsafe or overloaded vessel.

226. Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, is guilty of a misdemeanour.

Danger or obstruction in public way or line of navigation.

227. Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, is liable to a fine.

CHAPTER XXIV.

Assaults.

Common assault.

228. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

Assaults causing actual bodily harm.

229. Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and is liable to imprisonment for five years.

Assaults on persons protecting wreck.

230. Any person who assaults and strikes or wounds any magistrate, officer, or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded, or cast on shore, or lying under water, is guilty of a misdemeanour, and is liable to imprisonment for seven years.

231. Any person who—

Assaults punishable with five years' imprisonment.

(*a*) assaults any person with intent to commit a felony or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence; or

(*b*) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer; or

(*c*) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business, or manufacture or respecting any person concerned or employed therein; or

(*d*) assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or

(*e*) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of a misdemeanour, and is liable to imprisonment for five years.

CHAPTER XXV.

Offences Against Liberty.

Definition of kidnapping from the Colony.

232. Any person who conveys any person beyond the limits of the Colony without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from the Colony.

Definition of kidnapping from lawful guardianship.

233. Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of a lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Definition of abduction.

234. Any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person

Punishment for kidnapping.

235. Any person who kidnaps any person from the Colony or from lawful guardianship, is guilty of a felony, and is liable to imprisonment for seven years.

Kidnapping or abducting in order to murder.

236. Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony, and is liable to imprisonment for ten years.

Kidnapping or abducting with intent to confine person.

237. Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony, and is liable to imprisonment for seven years.

Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.

238. Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony, and is liable to imprisonment for ten years.

Wrongfully concealing or keeping in confinement kidnapped or abducted person.

239. Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of a felony, and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under fourteen years with intent to steal from its person.

240. Any person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child, is guilty of a felony, and is liable to imprisonment for seven years.

Buying or disposing of any person as a slave.

241. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, is guilty of a felony, and is liable to imprisonment for seven years.

Habitual dealing in slaves.

242. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony, and is liable to imprisonment for ten years.

Unlawful compulsory labour.

243. Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.

Division V.—Offences Relating to Property.

CHAPTER XXVI.

THEFT.

Things capable of being stolen.

244. Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and subsequently tamed, which is the property of any person, is capable of being stolen.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in the Colony, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in the Colony, which are the property of any person, are capable of being stolen while they are in confinement, and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

Definition of theft.

245. (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say—

(*a*) an intent permanently to deprive the general or special owner of the thing of it;

(*b*) an intent to use the thing as a pledge or security;

(*c*) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(*d*) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(*e*) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

The term " special owner " includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

Special cases.

246. (1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

(2) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

Funds, etc., held under direction.

247. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person for whom the money, security or power of attorney was received until the direction has been complied with.

Funds, etc., received by agents for sale.

248. When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property; to the person from

whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

Money received for another.

249. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

Theft by person having an interest in the thing stolen.

250. When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are the owners of it.

Husband and wife.

251. A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be theft if they were not married, is deemed to have stolen the thing, and may be charged with theft.

General punishment for theft.

252. Any person who steals anything capable of being stolen is guilty of the felony termed theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for three years.

Stealing wills.

253. If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years.

Stealing postal matter, etc.

254. If the thing stolen is postal matter or any chattel, money or valuable security contained in any postal matter, the offender is liable to imprisonment for ten years.

Stealing cattle.

255. If the thing stolen is any of the things following, that is to say: a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, the offender is liable to imprisonment for ten years.

Stealing from the person; stealing goods in transit, etc.

256. If a theft is committed under any of the circumstances following, that is to say—

(*a*) if the thing is stolen from the person of another;

(*b*) if the thing is stolen in a dwelling-house, and its value exceeds five pounds, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

(*c*) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;

(*d*) if the thing stolen is attached to or forms part of a railway;

(*e*) if the thing is stolen from a vessel which is in distress or wrecked or stranded;

(*f*) if the thing is stolen from a public office in which it is deposited or kept;

(*g*) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument,

the offender is liable to imprisonment for seven years.

Stealing by persons in public service.

257. If the offender is a person employed in the public service and the thing stolen is the property of His Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years.

Stealing by clerks and servants.

258. If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.

Stealing by directors or officers of companies.

259. If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for seven years.

Stealing by agents, etc.

260. If the thing stolen is any of the things following, that is to say—

(*a*) property which has been received by the offender with a power of attorney for the disposition thereof;

(*b*) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay, or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;

(*c*) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;

(*d*) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;

(*e*) the whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction,

the offender is liable to imprisonment for seven years.

Stealing by tenants or lodgers.

261. If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds five pounds, he is liable to imprisonment for seven years.

Stealing after previous conviction.

262. If the offender, before committing the theft, had been convicted of a theft punishable under section 252, he is liable to imprisonment for seven years.

CHAPTER XXVII.

OFFENCES ALLIED TO STEALING.

Concealing registers.

263. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, is guilty of a felony, and is liable to imprisonment for ten years.

Concealing wills.

264. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a felony, and is liable to imprisonment for ten years.

Concealing deeds.

265. Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land, is guilty of a felony, and is liable to imprisonment for three years.

Killing animals with intent to steal.

266. Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence, and is liable to the same punishment as if he had stolen the animal.

Severing with intent to steal.

267. Any person who makes anything movable with intent to steal it is guilty of an offence, and is liable to the same punishment as if he had stolen the thing after it had become movable.

Fraudulently dealing with minerals in mines.

268. Any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a felony, and is liable to imprisonment for five years.

Fraudulent appropriation of power.

269. Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus or substance, the property of another person, is guilty of a felony, and is liable to imprisonment for five years.

Unlawful use of vehicles, animals, etc.

270. Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal or any vehicle or cycle, however propelled, or

any vessel, shall be guilty of a misdemeanour, and shall be liable to imprisonment for six months, or to a fine of fifty pounds, or to both such imprisonment and such fine.

CHAPTER XXVIII.

ROBBERY AND EXTORTION.

Definition of robbery.

271. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

Punishment of robbery.

272. Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

Attempted robbery.

273. Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony, and is liable to imprisonment for seven years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

Assault with intent to steal.

274. Any person who assaults any person with intent to steal anything is guilty of a felony, and is liable to imprisonment for three years.

Demanding property by written threats.

275. Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a felony, and is liable to imprisonment for fourteen years.

Attempts at extortion by threats.

276. Any person who, with intent to extort or gain anything from any person—

(1) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour; or

(2) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act; or

(3) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid,

is guilty of a felony, and if the accusation or threat of accusation is of—

(*a*) an offence for which the punishment of death or imprisonment for life may be inflicted; or

(*b*) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or

(*c*) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or

(*d*) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender is liable to imprisonment for fourteen years.

In any other case the offender is liable to imprisonment for three years.

It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

Procuring execution of deeds, etc., by threats.

277. Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any felony or misdemeanour, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person—

(*a*) to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security; or

(*b*) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Demanding property with menaces with intent to steal.

278. Any person who, with intent to steal any valuable thing, demands it from any person with menaces or force, is guilty of a felony, and is liable to imprisonment for five years.

CHAPTER XXIX.

Burglary, Housebreaking and Similar Offences.

Definitions.

279. A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar flap, or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

Housebreaking and burglary.

280. Any person who—

(1) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or

(2) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof,

is guilty of the felony termed housebreaking, and is liable to imprisonment for seven years.

If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.

Entering dwelling-house with intent to commit felony.

281. Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein, is guilty of a felony, and is liable to imprisonment for five years.

If the offence is committed in the night, the offender is liable to imprisonment for seven years.

Breaking into building and committing felony.

282. Any person who—

(1) breaks and enters a schoolhouse, shop, warehouse, store, office, or counting-house, or a building which is adjacent to a dwelling-house and occupied with it, but is no part of it, or any building used as a place of worship, and commits a felony therein; or

(2) having committed a felony in a schoolhouse, shop, warehouse, store, office, or counting-house, or in any such other building as last mentioned, breaks out of the building,

is guilty of a felony, and is liable to imprisonment for seven years.

Breaking into building with intent to commit felony.

283. Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, or counting-house, or a building which is adjacent to a dwelling-house and occupied with it, but is no part of it, or any building used as a place of worship, with intent to commit a felony therein, is guilty of a felony, and is liable to imprisonment for five years.

Persons found armed, etc., with intent to commit felony.

284. Any person who is found under any of the circumstances following, that is to say—

(*a*) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house and to commit a felony therein;

(*b*) being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit a felony therein;

(*c*) having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;

(*d*) having in his possession by day any such instrument with intent to commit a felony;

(*e*) having his face masked or blackened or being otherwise disguised, with intent to commit a felony;

(*f*) being in any building whatever by night with intent to commit a felony therein;

(*g*) being in any building whatever by day with intent to commit a felony therein, and having taken precautions to conceal his presence,

is guilty of a felony, and is liable to imprisonment for three years.

If the offender has been previously convicted of a felony relating to property, he is liable to imprisonment for seven years.

Forfeiture of housebreaking instruments.

285. When any person is convicted of an offence under this chapter the court may order that any instrument of housebreaking used in connexion with any such offence shall be forfeited to His Majesty.

CHAPTER XXX.

False Pretences.

Definition of false pretence.

286. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making pretence.

it knows to be false or does not believe to be true, is a false

287. Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour, and is liable to imprisonment for three years. **Obtaining goods by false pretences.**

288. Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, indorse, alter or destroy the whole or any part of any valuable security, or to write any name or impress or affix seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanour, and is liable to imprisonment for three years. **Obtaining execution of a security by false pretences.**

289. Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour, and is liable to imprisonment for three years. **Cheating.**

290. Any person who— **Obtaining credit, etc., by false pretences.**

(1) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud; or

(2) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or

(3) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property, after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of a misdemeanour, and is liable to imprisonment for one year.

291. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a misdemeanour, and is liable to imprisonment for three years. **Conspiracy to defraud.**

Frauds on sale or mortgage of property.

292. Any person who, being a seller or mortgagor of any property, or being the advocate or agent of any such seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

(1) conceals from the purchaser or mortgagee any instrument material to the title, or any incumbrance; or

(2) falsifies any pedigree on which the title depends or may depend; or

(3) makes any false statement as to the title offered or conceals any fact material thereto,

is guilty of a misdemeanour, and is liable to imprisonment for two years.

Pretending to exercise witchcraft or tell fortunes.

293. Any person who for gain or reward pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Obtaining registration, etc., by false pretence.

294. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any Ordinance by any false pretence, is guilty of a misdemeanour, and is liable to imprisonment for one year.

CHAPTER XXXI.

Receiving Property Stolen or Unlawfully Obtained and Like Offences.

Receiving stolen property, etc.

295. (1) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been feloniously stolen, taken, extorted, obtained or disposed of, is guilty of a felony, and is liable to imprisonment for seven years.

Receiving property unlawfully obtained.

(2) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing the same to have been unlawfully taken, obtained, converted or disposed of in a manner which constitutes a misdemeanour,

is guilty of a misdemeanour, and is liable to the same punishment as the offender by whom the property was unlawfully obtained, converted or disposed of.

Person suspected of having or conveying stolen property.

296. Any person who shall be brought before a court charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such court of how he came by the same, is guilty of a misdemeanour.

Receiving after change of ownership.

297. When a thing has been obtained by means of any act constituting a felony or misdemeanour, or by means of an act done at a place not in the Colony, which if it had been done in the Colony would have constituted an offence, and which is an offence under the laws in force in the place where it was done, and another person has acquired a lawful title to it, a subsequent receiving of the thing is not an offence although the receiver knows that the thing had previously been so obtained.

CHAPTER XXXII.

Frauds by Trustees and Persons in a Position of Trust, and False Accounting.

Trustees fraudulently disposing of trust property.

298. Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorised by the trust, is guilty of a felony, and is liable to imprisonment for seven years.

For the purposes of this section the term " trustee " includes the following persons and no others, that is to say—

(*a*) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

(*b*) trustees appointed by or under the authority of an Ordinance or Statute for any such purpose;

(*c*) persons upon whom the duties of any such trust as aforesaid devolve;

(*d*) executors and administrators.

Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts.

299. Any person who—

(1) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(2) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—

(*a*) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such act; or

(*b*) makes, or is privy to making, any false entry in any such book, document or account; or

(*c*) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony, and is liable to imprisonment for seven years.

False statements by officials of companies.

300. Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say—

(*a*) to deceive or to defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;

(*b*) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

is guilty of a felony, and is liable to imprisonment for seven years.

Fraudulent false accounting.

301. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say—

(*a*) destroys, alters, mutilates, or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or

(*b*) makes, or is privy to making, any false entry in any such book, document or account; or

(*c*) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony, and is liable to imprisonment for seven years.

False accounting by public officer.

302. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a misdemeanour.

Division VI.—Malicious Injuries to Property.

CHAPTER XXXIII.

Offences Causing Injury to Property.

Arson.

303. Any person who wilfully and unlawfully sets fire to—

(*a*) any building or structure whatever, whether completed or not; or

(*b*) any vessel, whether completed or not; or

(*c*) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

(*d*) a mine, or the workings, fittings or appliances of a mine,

is guilty of a felony, and is liable to imprisonment for life.

Attempts to commit arson.

304. Any person who—

(1) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(2) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Setting fire to crops and growing plants.

305. Any person who wilfully and unlawfully sets fire to—

(*a*) a crop of cultivated vegetable produce, whether standing or cut; or

(*b*) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or

(*c*) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Attempting to set fire to crops, etc.

306. Any person who—

(1) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(2) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for seven years.

Casting away vessels.

307. Any person who—

(1) wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or

(2) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(3) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal,

is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Attempts to cast away vessels.

308. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

Injuring animals.

309. Any person who wilfully and unlawfully kills, maims, or wounds any animal capable of being stolen is guilty of a misdemeanour.

Punishment for malicious injuries in general.

310. (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and he is liable, if no other punishment is provided, to imprisonment for two years.

In special cases: Destroying or damaging an inhabited house or a vessel with explosives.

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

(*a*) any person is in the dwelling-house or vessel; or

(*b*) the destruction or damage actually endangers the life of any person,

the offender is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

River bank or wall, or navigation works or bridges.

(3) (*a*) If the property in question is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(*b*) if the property in question is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway or canal passes, and the property is destroyed; or

(*c*) if the property in question, being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

the offender is guilty of a felony, and is liable to imprisonment for life.

Wills and registers.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony, and is liable to imprisonment for fourteen years.

Wrecks.

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender is guilty of a felony, and is liable to imprisonment for seven years.

Railways.

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a felony, and is liable to imprisonment for fourteen years.

Other things of special value.

(7) (*a*) If the property in question, being a vessel, whether completed or not, is destroyed; or

(*b*) if the property in question, being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or

(*c*) if the property in question is a light, beacon, buoy, mark, or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation; or

(*d*) if the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purposes of lading or unlading goods; or

(*e*) if the property in question, being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway or canal, or over which a highway, railway or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable; or

(*f*) if the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or

(*g*) if the property in question, being any such thing, machine, implement or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or

(*h*) if the property in question is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or

(*i*) if the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or

(*j*) if the property in question, being a rope, chain, or tackle of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or

(*k*) if the property in question, being any such rope, chain or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*l*) if the property in question is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool,

the offender is guilty of a felony, and is liable to imprisonment for seven years.

Deeds and records.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony, and is liable to imprisonment for seven years.

Attempts to destroy property by explosives.

311. Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Communicating infectious diseases to animals.

312. Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony, and is liable to imprisonment for seven years.

Removing boundary marks with intent to defraud.

313. Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a felony, and is liable to imprisonment for three years.

Wilful damage, etc., to survey and boundary marks.

314. Any person who—

(1) wilfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any Government department or in the course of or for the purposes of a Government survey; or

(2) being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same; or

(3) wilfully removes, defaces or injures any mark erected by an intending applicant for any lease, licence or right under an Ordinance relating to mines or minerals,

is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds, and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

Penalties for damage, etc., to railway works.

315. Any person who—

(1) wilfully damages, injures, or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material, or plant, acquired for or belonging to any railway works; or

(2) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones or buildings, or any other material, belonging to any railway works; or

(3) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

(4) wilfully molests, hinders, or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

is guilty of a misdemeanour, and is liable to imprisonment for three months, or to a fine of twenty pounds.

Threats to burn, etc.

316. Any person who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim, or wound any cattle, is guilty of a felony, and is liable to imprisonment for seven years.

Division VII.—Forgery, Coining, Counterfeiting and Similar Offences.

CHAPTER XXXIV.

DEFINITIONS.

Definition of forgery.

317. Forgery is the making of a false document with intent to defraud.

Document.

318. The term "document" in this division of this Code does not include a trade mark or any other sign used in connexion with articles of commerce though they may be written or printed.

Making a false document.

319. Any person makes a false document who—

(*a*) makes a document purporting to be what in fact it is not;

(*b*) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;

(*c*) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;

(*d*) signs a document—

(i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

Intent to defraud.

320. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

CHAPTER XXXV.

PUNISHMENT FOR FORGERY.

General punishment for forgery.

321. Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony, and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

Imprisonment for life.

322. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life, and the court may in addition order that any such document as aforesaid shall be forfeited to His Majesty.

Forgery of judicial or official document.

323. Any person who forges any judicial or official document is liable to imprisonment for seven years.

Imprisonment for seven years.

324. Any person who—

(1) forges any stamp, whether impressed or adhesive, used for the purposes of revenue or accounting by any Government Department; or

(2) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any dye or instrument capable of making the impression of any such stamp; or

(3) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue or accounting by the Colonial Government, with intent that another use shall be made of such stamp or any part thereof; or

(4) fraudulently mutilates any such stamp as last aforesaid, with intent that another use shall be made of such stamp; or

(5) fraudulently fixes or places upon any material or upon any such stamp as last aforesaid any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn or in any way removed from any other material or out of or from any other stamp; or

(6) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or

(7) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

is liable to imprisonment for seven years.

Uttering false documents

325. Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

Uttering cancelled or exhausted documents.

326. Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Procuring execution of documents by false pretences.

327. Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Obliterating crossings on cheques.

328. Any person who, with intent to defraud—

(1) obliterates, adds to, or alters the crossing on a cheque; or

(2) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered,

is guilty of a felony, and is liable to imprisonment for seven years.

Making documents without authority.

329. Any person who, with intent to defraud—

(1) without lawful authority or excuse, makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or

(2) knowingly utters any document or writing so made, signed, or executed by another person,

is guilty of a felony, and is liable to imprisonment for seven years.

Demanding property upon forged testamentary instruments.

330. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

Purchasing forged notes.

331. Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of a felony, and is liable to imprisonment for seven years.

Falsifying warrants for money payable under public authority.

332. Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony, and is liable to imprisonment for seven years.

Falsification of register.

333. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, is guilty of a felony, and is liable to imprisonment for seven years.

Sending false certificate of marriage to registrar.

334. Any person who signs or transmits to a person authorised by law to register marriages a certificate of marriage or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of a felony, and is liable to imprisonment for seven years.

False statements for registers of births, deaths, and marriages.

335. Any person who knowingly, and with intent to procure the same to be inserted in a register of births, deaths or marriages, makes any false statement, touching any matter required by law to be registered in any such register, is guilty of a felony, and is liable to imprisonment for three years.

CHAPTER XXXVI.

OFFENCES RELATING TO COIN.

Definitions.

336. In this chapter—

the term " coin " includes any coin coined in any of His Majesty's mints, or lawfully current by virtue of any Order in Council, Ordinance, Proclamation or otherwise in the Colony or in any part of His Majesty's dominions or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, and any coin of a foreign Sovereign or State;

the term " counterfeit coin " means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination.

Counterfeiting coin.

337. Any person who makes or begins to make any counterfeit coin is guilty of a felony, and is liable to imprisonment for life.

Preparations for coining.

338. Any person who—

(1) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or

(2) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or

(3) without lawful authority or excuse, the proof of which lies on him—

(*a*) buys, sells, receives, pays, or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or

(*b*) brings or receives into the Colony any counterfeit coin knowing it to be counterfeit; or

(*c*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould, or to be so adapted; or

(*d*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or

(*e*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument or machine which is adapted for cutting round blanks out of gold, silver or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit coin,

is guilty of a felony, and is liable to imprisonment for life.

Clipping.

339. Any person who deals with any coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as coin, is guilty of a felony, and is liable to imprisonment for seven years.

Possession of clippings.

340. Any person who unlawfully has in his possession or disposes of any filings, or clipping of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with gold or silver coin in such a manner

as to diminish its weight, knowing the same to have been so obtained, is guilty of a felony, and is liable to imprisonment for seven years.

Uttering counterfeit coin.

341. Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour.

Repeated uttering.

342. Any person who—

(1) utters any counterfeit coin knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin; or

(2) utters any counterfeit coin knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing, utters any other counterfeit coin knowing it to be counterfeit; or

(3) has in his possession three or more pieces of counterfeit coin, knowing them to be counterfeit and with intent to utter any of them,

is guilty of a felony, and is liable to imprisonment for three years.

Uttering metal as coin.

343. Any person who, with intent to defraud, utters as and for coin any metal or piece of metal, whether a coin or not, which is of less value than the coin as and for which it is uttered, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Exporting counterfeit coin.

344. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind for the purpose of being exported from the Colony, any counterfeit coin whatever, knowing it to be counterfeit, is guilty of a misdemeanour.

Forfeiture.

345. When any person is convicted of an offence under this chapter, or the preceding chapter, the court may order the forfeiture to His Majesty of any forged bank note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine, press, or any coin, bullion or metal used or employed in the commission of any such offence.

CHAPTER XXXVII.

COUNTERFEIT STAMPS.

Possession of die used for purpose of making stamps.

346. Any person who, without lawful authority or excuse, the proof of which lies on him—

(1) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Posts and Telegraphs Department in the Colony or in any part of His Majesty's dominions, or in any country under the protection of His Majesty, or in respect of which His Majesty has accepted a mandate, or in any foreign country, or capable of producing in or on paper any words, figures, letters, marks, or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose; or

(2) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid; or

(3) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever; or

(4) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp; or

(5) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp; or

(6) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it; or

(7) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid,

is guilty of a felony, and is liable to imprisonment for seven years, and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited to His Majesty.

Paper and dies for postage stamps.

347. Any person who, without lawful authority or excuse, the proof of which lies on him—

(1) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of the Colony, or of any part of His Majesty's dominions, or of any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, or of any foreign country; or

(2) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession, or disposes of any die, plate, instrument, or material for making any such imitation or representation,

is guilty of a misdemeanour, and is liable to imprisonment for one year, or to a fine of fifty pounds. And any stamps, and any other such things as aforesaid, which are found in his possession, shall be forfeited to His Majesty.

For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

CHAPTER XXXVIII.

Counterfeiting Trade Marks.

Trade marks defined.

348. A trade mark is—

(*a*) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person;

(*b*) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such law.

349. Any person who does any of the following things with intent to defraud or to enable another to defraud any person, that is to say— **Counterfeiting trade marks misdemeanour.**

(*a*) forges or counterfeits any trade mark;

(*b*) applies any trade mark, or any forged or counterfeit trade mark, to any chattel or article, not being the merchandise of any person whose trade mark is so forged or counterfeited;

(*c*) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;

(*d*) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;

(*e*) encloses or places any chattel or article in, upon, under or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;

(*f*) applies or attaches any chattel or article to any case, cover, reel, ticket, label or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied;

(*g*) encloses, places or attaches any chattel or article in, upon, under, with, or to any thing having thereon any trade mark of any other person,

is guilty of a misdemeanour.

Every person committing any such misdemeanour as aforesaid shall forfeit to His Majesty—

all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;

every instrument for applying any such trade mark or counterfeit trade mark in his possession or power;

the chattels and articles and the things mentioned in paragraphs (*d*), (*e*) and (*g*), and all similar things made to be used in like manner in his possession or power.

CHAPTER XXXIX.

PERSONATION.

Personation in general.

350. Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.

Falsely acknowledging deeds, recognizances, etc.

351. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a misdemeanour.

Personation of a person named in a certificate.

352. Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

Lending, etc., certificate for personation.

353. Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office or to

be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour.

Personation of person named in a testimonial of character.

354. Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Lending, etc., testimonial for personation.

355. Any person who, being a person to whom any such document as is mentioned in the last preceding section has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of a misdemeanour.

CHAPTER XL.

Secret Commissions and Corrupt Practices.

Interpretation.

356. (1) For the purpose of this chapter, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

(2) A person serving under the Crown or under any municipal council or board or under any other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, and a member of any such municipal council or board or other public body is an agent within the meaning of this chapter.

Corrupt practices.

357. If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne

to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particulars, and which to his knowledge is intended to mislead the principal,

he shall be guilty of a misdemeanour, and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred pounds, or to both such imprisonment and such fine.

Secret commission on Government contracts.

358. Any person convicted of an offence under this chapter shall, where the matter of transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, or a sub-contract to execute any work comprised in such contract, be liable to imprisonment for seven years, or to a fine of five hundred pounds, or to both such fine and such imprisonment.

Presumption as to corrupt practices.

359. Where in any proceedings against a person for an offence under this chapter it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of the Crown or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, by or from a person or agent of a person holding or seeking to obtain a contract from the Crown or any Government department or municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this chapter, unless the contrary is proved.

Consent to prosecution.

360. A prosecution for an offence under this chapter shall not be instituted without the consent of the Attorney General or Solicitor General.

Division VIII.—Attempts and Conspiracies to Commit Crimes and Accessories After the Fact.

CHAPTER XLI.

ATTEMPTS.

Attempt defined.

361. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fufil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

Attempts to commit offences.

362. Any person who attempts to commit a felony or misdemeanour is guilty of an offence, which, unless otherwise stated, is a misdemeanour.

Punishment of attempts to commit certain felonies.

363. Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or upwards, with or without other punishment, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years.

Soliciting or inciting others to commit offence in Colony or elsewhere.

364. Any person who solicits or incites or attempts to procure another to do any act or make any omission, whether in the Colony or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed, under the laws of the Colony, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other

person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in the Colony :

Provided that if the act or omission is proposed to be done or made at a place not in the Colony, the punishment shall not exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission :

Provided also that, in the last-mentioned case, a prosecution shall not be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

Neglect to prevent felony.

365. Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof, is guilty of a misdemeanour.

CHAPTER XLII.

CONSPIRACIES.

Conspiracy to commit felony.

366. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in the Colony would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.

Conspiracy to commit misdemeanour.

367. Any person who conspires with another to commit a misdemeanour, or to do any act in any part of the world which if done in the Colony would be a misdemeanour, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour.

Other conspiracies.

368. Any person who conspires with another to effect any of the purposes following, that is to say—

(1) to prevent or defeat the execution or enforcement of any Ordinance, Statute or Order in Council; or

(2) to cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or

(3) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or

(4) to injure any person in his trade or profession; or

(5) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or

(6) to effect any unlawful purpose; or

(7) to effect any unlawful purpose by any unlawful means,

is guilty of a misdemeanour.

CHAPTER XLIII.

Accessories After the Fact.

369. A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

Definition of accessories after the fact.

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

Punishment of accesories after the fact to felonies.

370. Any person who becomes an accessory after the fact to a felony is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

Punishment of accesories after the fact to misdemeaneurs.

371. Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour.

Repeal.

372. The Uniforms Ordinance (Chapter 65 of the Revised Edition) and the Criminal Law Amendment Ordinance (Chapter 78 of the Revised Edition) are hereby repealed.

THE CRIMINAL PROCEDURE CODE.

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ARREST, ESCAPE AND RETAKING.

Arrest generally.

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No 11 of 1930.

Date of assent. [28th May, 1930.]

An Ordinance to make Provision for the Procedure to be followed in Criminal Cases.

Date of commencement. *By Proclamation.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

PART I.—PRELIMINARY.

Short title and commencement.

1. This Ordinance may be cited as " the Criminal Procedure Code " (hereinafter referred to as " this Code "), and shall commence and come into operation on such date as the Governor may, by proclamation in the Gazette, appoint.

Interpretation

2. In this Code, unless the context otherwise requires—

" cognizable offence " means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

" European " means a person of European origin or descent and includes an American who is not of origin or descent other than European;

" native " means any native of Africa not of European or Asiatic extraction, but includes an Arab and a Somali, and also any Beluchi born in Africa;

" non-cognizable offence " means an offence for which a police officer may not arrest without warrant;

" officer in charge of a police station " includes, when the officer in charge of the police station is absent from the station-house, or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer, and is above the rank of constable,

or, when the Governor so directs, any other police officer so present. For the purpose of this definition a European constable shall be deemed to be above the rank of constable;

" police officer " includes any member of the Police Force;

" police station " means a post or place appointed by the Commissioner of Police to be a police station, and includes any local area policed from such station;

" preliminary investigation " means an investigation of a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the Supreme Court;

" public prosecutor " means any person appointed under section 83, and includes the Attorney General, the Solicitor General, a Crown Counsel, and any person acting under the directions of the Attorney General;

" subordinate court " includes a subordinate native court;

" summary trial " means a trial held by a subordinate court under Part VI.

Trial of offences under Penal Code.

3. (1) All offences under the Penal Code shall be inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

Trial of offences under other laws.

(2) All offences under any other law shall be inquired into, tried, and otherwise dealt with according to the same provisions, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying, or otherwise dealing with such offences.

Saving power of Supreme Court.

(3) Provided, however, and notwithstanding anything in this Code contained, the Supreme Court may, subject to the provisions of any law for the time being in force in the Colony, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable, exercise such jurisdiction according to the course of procedure and practice observed by and before His Majesty's High Court of Justice in England at the date of the coming into operation of this Code.

PART II.—POWERS OF COURTS.

Offences under Penal Code.

4. Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable.

Offences under other laws.

5. (1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in such law, be tried by such court.

(2) When no court is so mentioned, it may, subject to the other provisions of this Code, be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable.

Sentences which Supreme Court may pass.

6. The Supreme Court may pass any sentence authorised by law.

Sentences which subordinate courts may pass.

7. Subject to the provisions of Part VII of this Code, subordinate courts of the first, second and third class may, when the accused is a non-native, pass the following sentences, namely :—

Subordinate courts of the first class.	Imprisonment for a term not exceeding two years. Fine not exceeding £300. Corporal punishment.
Subordinate courts of the second class.	Imprisonment for a term not exceeding six months. Fine not exceeding £75. Corporal punishment.
Subordinate courts of the third class.	Imprisonment for a term not exceeding one month. Fine not exceeding £15.

Combination of sentences.

8. Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

Powers of subordinate native courts.

9. (1) Liwalis' and Cadis' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the second class with respect to non-natives.

(2) Mudirs' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the third class with respect to non-natives.

Powers of subordinate courts over natives.

10. (1) Subordinate courts of the first, second and third class may try natives for any offence under the Penal Code or any other law other than offences under sections 36, 37 and 38 of the Penal Code, murder, manslaughter, rape, or attempts to commit or aiding, abetting, counselling or procuring the commission of any such offences.

(2) Subordinate courts of the first and second class may pass on any native so tried any sentence authorised by the Penal Code or any other law.

(3) Subordinate courts of the third class may pass on any native so tried a sentence of imprisonment for a term not exceeding six months or a fine not exceeding twenty pounds or both.

Sentences requiring confirmation by Supreme Court.

11. (1) No sentence imposed on a native by any subordinate court exceeding six months' imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine or a combination of such sentences) or twelve strokes shall be carried into effect, and no fine exceeding fifty pounds shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court.

(2) The Supreme Court may exercise the same powers in confirmation as are conferred upon it in revision by Part XI of this Code.

Release on bail pending order of Supreme Court.

12. (1) Whenever a subordinate court shall pass a sentence which requires confirmation by the Supreme Court under the last preceding section, the court imposing such sentence may in its discretion release the person sentenced on bail pending the order of the Supreme Court.

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the Supreme Court :

Provided, however, that the person sentenced may, pending the order of the Supreme Court, elect to serve his sentence from the date upon which he is sentenced by the subordinate court, in which case the term of imprisonment shall run from such date.

Sentences in cases of conviction of several offences at one trial.

13. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court :

Provided as follows :—

(*a*) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

(*b*) If the case is tried by a subordinate court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose.

(3) For the purposes of appeal or confirmation the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

SPECIAL DISTRICTS.

Appointment of special districts.

14. The Governor in Council if satisfied that the necessity exists may, by order, direct that any area in the Colony shall be a special district for the purposes of this Code.

Special powers to magistrates in special districts to try certain offences.

15. The Governor may, by appointment in the Gazette, confer upon any officer in charge of a special district, holding a subordinate court of the first or second class, power to try natives for offences under sections 36, 37 and 38 of the Penal

Code, and for the offences of murder, manslaughter and rape, and for attempts to commit or aiding, abetting, counselling or procuring the commission of any of such offences :

Provided that all such offences shall be tried with the aid of assessors, and shall be inquired into and tried in the manner prescribed for the trial of such offences by the Supreme Court.

Confirmation of sentences.

16. No sentence of death or sentence of imprisonment exceeding six months or sentence of corporal punishment exceeding twelve strokes imposed under the powers conferred by the last preceding section shall be carried into effect, and no fine exceeding fifty pounds imposed under such powers shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court :

Provided that no sentence of death shall be carried into effect until, in addition to the confirmation by the Supreme Court, such sentence has been confirmed by the Governor.

Sentence of death to be confirmed by Governor.

17. Whenever a sentence of death shall be confirmed by the Supreme Court under the last preceding section, such court shall forthwith transmit the record of the case or a certified copy thereof to the Governor for his confirmation.

Provisions as to appeal from death sentence.

18. When an accused person has been sentenced to death by a subordinate court exercising powers conferred on it under section 15, such court shall, on the receipt of the confirmation of such sentence by the Supreme Court, inform him that he may appeal to His Majesty's Court of Appeal for Eastern Africa as if he had been convicted on a trial held by the Supreme Court and, if he wishes to appeal, inform him that his appeal must be preferred within thirty days from the date on which he is given such information.

Execution of death sentence.

19. When a sentence of death has been passed by a subordinate court exercising powers conferred on it under section 15, such court shall, on receiving the order in appeal, if any, thereon and the order of confirmation of sentence or other order by the Supreme Court and the Governor, issue a warrant or take such other steps as may be necessary to carry such order or orders into effect.

PART III.—GENERAL PROVISIONS.

ARREST, ESCAPE AND RETAKING.

Arrest generally.

Arrest, how made.

20. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section shall give a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Search of place entered by person sought to be arrested.

21. (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under the preceding sub-section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to the woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break out of house, etc., for purposes of liberation.

22. Any police officer or other person authorised to make an arrest may break out of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecesary restraint.

23. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

24. Whenever a person is arrested—

(*a*) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(*b*) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Mode of searching women.

25. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Power to seize offensive weapons.

26. The officer or other person making any arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

Arrest without warrant.

Arrest by police officer without warrant.

27. Any police officer may, without an order from a magistrate and without a warrant, arrest—

(*a*) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

(*b*) any person who commits a breach of the peace in his presence;

(*c*) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(*d*) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(*e*) any person whom he suspects upon reasonable grounds of being a deserter from His Majesty's Army or Navy or Air Force;

(*f*) any person whom he finds in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(*g*) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of the Colony which, if committed in the Colony, would have been punishable as an offence, and for which he is, under the Fugitive Criminals Surrender Ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in the Colony;

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(*h*) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(*i*) any released convict committing a breach of any provision prescribed by section 330 or of any rule made thereunder.

Arrest of vagabonds, habitual robbers, etc.

28. Any officer in charge of a police station may in like manner arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;

(*b*) any person within the limits of such station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;

(*c*) any person who is by repute an habitual robber, housebreaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when police officer deputes subordinate to arrest without warrant.

29. When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in such officer's presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Refusal to give name and residence.

30. (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses on the demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate if so required :

Provided that if such person is not resident in the Colony the bond shall be secured by a surety or sureties resident in the Colony.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be taken before the nearest magistrate having jurisdiction.

Disposal of persons arrested by police officer.

31. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

Arrest by private person.

32. (1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony.

(2) Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorised by him.

Disposal of person arrested by private person.

33. (1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 27, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 30. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

Detention of persons arrested without warrant.

34. When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which such person shall have been brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate subordinate court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where such person is retained in custody he shall be brought before a subordinate court as soon as practicable.

Police to report apprehensions.

35. Officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or not.

Offence committed in magistrate's presence.

36. When any offence is committed in the presence of a magistrate within the local limits of his jurisdiction he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by magistrate.

37. Any magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Escape and Retaking.

Recapture of person escaping.

38. If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in the Colony.

Provision of sections 21 and 22 to apply to arrests under section 38.

39. The provisions of sections 21 and 22 shall apply to arrests under the last preceding section, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to magistrate or police officer.

40. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

(*a*) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorised to arrest;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

PREVENTION OF OFFENCES.

Security for keeping the Peace and for Good Behaviour.

Security for keeping the peace.

41. (1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such magistrate's jurisdiction.

(3) When any magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(4) A magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

42. Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Security for good behaviour from habitual offenders.

43. Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person within the local limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker or thief; or

(*b*) is by habit a receiver of stolen property, knowing the same to have been stolen; or

(*c*) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(*d*) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXX, XXXIII or XXXVI of the Penal Code; or

(*e*) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit.

Proviso as to European vagrants *Cap.* 63.

44. The provisions of the two last preceding sections shall not apply to Europeans in cases where they may be dealt with under the Vagrancy Ordinance or any Ordinance amending or substituted for such Ordinance.

Order to be made.

45. When a magistrate acting under section 41, section 42 or section 43 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth—

(*a*) the substance of the information received;

(*b*) the amount of the bond to be executed;

(*c*) the term for which it is to be in force; and

(*d*) the number, character and class of sureties, if any, required.

Procedure in respect of person present in court.

46. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

47. If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that whenever it appears to such magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the magistrate may at any time issue a warrant for his arrest.

Copy of order under section 45 to accompany summons or warrant.

48. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 45, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

Power to dispense with personal attendance.

49. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

Inquiry as to truth of information.

50. (1) When an order under section 45 has been read or explained under section 46 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 47, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before subordinate courts.

(3) For the purposes of this section the fact that a person comes within the provisions of section 43 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

Order to give security.

51. (1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the magistrate shall make an order accordingly :

Provided that—

(*a*) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 45 ;

(*b*) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(*c*) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) Any person ordered to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part XI (relating to appeals) shall apply to every such appeal.

Discharge of person informed against.

52. If on an inquiry under section 50 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Proceedings in all cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

53. (1) If any person in respect of whom an order requiring security is made under section 45 or section 51 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the magistrate, for sufficient reason, fixes a later date.

Contents of bond.

54. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Power to reject sureties.

55. A magistrate may refuse to accept any surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the magistrate, such surety is an unfit person.

Procedure on failure of person to give security

56. (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in the next succeeding sub-section, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Supreme Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(3) The Supreme Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed three years.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order and shall await the orders of such court or magistrate.

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour.

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour as the court or magistrate in each case directs.

Power to release persons imprisoned for failure to give security.

57. Whenever a magistrate empowered to hold a subordinate court of the first class is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the Supreme Court, and such court may, if it thinks fit, order such person to be discharged.

Power of Supreme Court to cancel bond.

58. The Supreme Court may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

Discharge of sureties.

59. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel any bond executed under any of the preceding sections within the local limits of his jurisdiction.

(2) On such application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall for the purposes of sections 54, 55, 56 and 57 be deemed to be an order made under section 51.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

60. Every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Information of design to commit such offences

61. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

62. A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.

Prevention of injury to public property.

63. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

PART IV.—PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS.

PLACE OF INQUIRY OR TRIAL.

General authority of courts of the Colony.

64. Every court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within the Colony, or which according to law may be dealt with as if it had been committed within the Colony, and to deal with the accused person according to its jurisdiction.

Accused person to be sent to district where offence committed.

65. Where a person accused of having committed an offence within the Colony has escaped or removed from the province or district within which the offence was committed and is found within another province or district, the court within whose jurisdiction he is found shall cause him to be brought before it and shall, unless authorised to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed, or require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

Removal of accused person under warrant.

66. Where any person is to be sent in custody in pursuance of the last preceding section, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be tried.

Powers of Supreme Court.

67. The Supreme Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings:

Provided that, except under section 82, no criminal case shall be brought under the cognizance of the Supreme Court unless the same shall have been previously investigated by a subordinate court and the accused person shall have been committed for trial before the Supreme Court.

Place and date of sessions of the Supreme Court.

68. (1) For the exercise of its original criminal jurisdiction the Supreme Court shall hold sittings at such places and on such days as the Chief Justice may direct.

(2) The registrar of the Supreme Court shall ordinarily give notice beforehand of all such sittings.

Ordinary place of inquiry and trial.

69. Subject to the provisions of section 67 and to the powers of transfer conferred by sections 77 and 79, every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed.

Trial at place where act done or where consequence of offence ensues.

70. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Trial where offence is connected with another offence.

71. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a court within the local limits of whose jurisdiction either act was done.

Trial where place of offence is uncertain.

72. When it is uncertain in which of several local areas an offence was committed; or

when an offence is committed partly in one local area and partly in another; or

when an offence is a continuing one, and continues to be committed in more local areas than one; or

when it consists of several acts done in different local areas,

it may be inquired into or tried by a court having jurisdiction over any of such local areas.

Offence committed on a journey.

73. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

Supreme Court to decide in cases of doubt.

74. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, the Supreme Court may decide by which court the offence shall be inquired into or tried.

Court to be open.

75. The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding judge or magistrate may, if he thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court.

Transfer of Cases.

Transfer of case where offence committed outside jurisdiction.

76. (1) If upon the hearing of any complaint it appears that the cause of complaint arose outside the limits of the jurisdiction of the court before which such complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.

(2) If the accused person is in custody and the court directing such transfer thinks it expedient that such custody should be continued, or, if he is not in custody, that he should be placed in such custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for that purpose to such officer, and shall deliver to him the complaint and recognizances, if any, taken by such court, to be delivered to the court before whom the accused person is to be taken; and such complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by such last-mentioned court.

(3) If the accused person is not continued or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case as aforesaid, and thereupon the provisions of the preceding sub-section respecting the transmission and validity of the documents in the case shall apply.

Transfer of cases between magistrates.

77. Any magistrate holding a subordinate court of the first class—

(*a*) may transfer any case of which he has taken cognizance for inquiry or trial to any magistrate holding a subordinate court empowered to inquire into or try such case within the local limits of such first class subordinate court's jurisdiction; and

(*b*) may direct or empower any magistrate holding a subordinate court of the second or third class or any magistrate holding a native subordinate court who has taken cognizance of any case, and whether evidence has been taken in such case or not, to transfer it for inquiry or trial to himself or to any other specified magistrate within the local limits of his jurisdiction who is competent to try the accused or commit him for trial, and such magistrate may dispose of the case accordingly.

Procedure when after commencement of inquiry or trial magistrate finds case should be transferred to another magistrate.

78. If in the course of any inquiry or trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under the last preceding section.

Power of Supreme Court to change venue.

79. (1) Whenever it is made to appear to the Supreme Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto; or

(*b*) that some question of law of unusual difficulty is likely to arise; or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses; or

(*e*) that such an order is expedient for the ends of justice or is required by any provision of this Code;

it may order—

(i) that any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but in other respects competent to inquire into or try such offence;

(ii) that any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial to itself.

(2) The Supreme Court may act on the report of the lower court or on the application of a party interested or on its own initiative.

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Attorney General, be supported by affidavit.

(4) Every accused person making any such application shall give to the Attorney General notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(5) When an accused person makes any such application the Supreme Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

CONTROL OF CROWN IN CRIMINAL PROCEEDINGS.

Power of Attorney General to enter *nolle prosequi*.

80. (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Attorney General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the accused shall not be before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed, and such subordinate court shall forthwith cause a similar notice in writing to be given

to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

Delegation of powers by Attorney-General.

81. The Attorney General may order in writing that all or any of the powers vested in him by the last preceding section and by Part VIII of this Code be vested for the time being in the Solicitor General or a Crown Counsel, and the exercise of these powers by the Solicitor General or a Crown Counsel shall then operate as if they had been exercised by the Attorney General :

Provided that the Attorney General may in writing revoke any order made by him under this section.

Criminal informations by the Attorney-General.

82. (1) Notwithstanding anything in this Code contained the Attorney General may, with the previous sanction of the Governor in Council, exhibit to the Supreme Court, against persons subject to the jurisdiction of the Supreme Court, informations for all purposes for which His Majesty's Attorney General for England may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by His Majesty's Attorney General for England so far as the circumstances of the case and the practice and procedure of the Supreme Court will admit.

(3) The Supreme Court may make rules for carrying into effect the provisions of this section.

APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS.

Power to appoint public prosecutors.

83. (1) The Governor may appoint generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called public prosecutors.

(2) In any case committed for trial to the Supreme Court the Attorney General may appoint any advocate of the Supreme Court, or officer of the administration, not being an officer of police below the rank of inspector of police, to be a public prosecutor for the purpose of such case.

(3) Every public prosecutor shall be subject to the express directions of the Attorney General.

Powers of public prosecutors.

84. A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his directions.

Withdrawal from prosecution in trials before subordinate courts.

85. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instructions of the Attorney General, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal—

(*a*) if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(*b*) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

Permission to conduct prosecution.

86. (1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Governor in this behalf shall be entitled to do so without permission.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by the last preceding section, and the provisions of that section shall apply to any withdrawal by such person or officer.

(3) Any person conducting the prosecution may do so personally or by an advocate.

Institution of Proceedings.

Making of Complaint.

Complaint or charge.

87. (1) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint or charge thereof to a magistrate within the local limits of whose jurisdiction either the offence alleged to have been committed is triable or the person accused is alleged to reside or be.

(2) Every complaint or charge shall be in writing, or the substance thereof shall be reduced to writing by the magistrate, and shall be signed by the complainant and also by the magistrate.

Issue of summons or warrant.

88. (1) The magistrate upon receiving any such complaint or charge may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed :

Provided that a warrant shall not be issued in the first instance unless the complaint or charge has been made upon oath either by the complainant or by a witness or witnesses.

(2) The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without complaint or charge.

(3) Any summons or warrant may be issued on a Sunday.

PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS.

Summons.

Form and contents of summons.

89. (1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such court or by such other officer as the Supreme Court may from time to time by rule direct.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time or place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall state shortly the offence with which the person against whom it is issued is charged.

Service of summons.

90. (1) Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant, and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

91. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family or with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when service cannot be effected as before provided.

92. If service in the manner provided by the two last preceding sections cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or Kenya and Uganda Railways and Harbours.

93. Where the person summoned is in the active service of the Government or of the Kenya and Uganda Railways and Harbours, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 90 and shall return it to the court under his signature with the indorsement required by that section. Such signature shall be evidence of the service.

Service on company.

94. Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the chief officer of the corporation in the Colony at the registered office of such company or body corporate. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Service outside local limits of jurisdiction

95. When a court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service when serving officer not present.

96. (1) Where the officer who has served a summons is not present at the hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate that such summons has been served, and a duplicate of the summons purporting to be indorsed in the

manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

Power to dispense with personal attendance of accused.

97. (1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused, provided that he pleads guilty in writing or appears by an advocate.

(2) But the magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the peronal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided. But no such warrant shall be issued unless a complaint or charge has been made upon oath.

(3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time prescribed for such payment the magistrate may forthwith issue a summons calling upon such accused person to show cause why he should not be committed to prison for such term as the magistrate may then prescribe. If such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such term as the magistrate may then fix.

(4) If in any case in which under this section the attendance of an accused person is dispensed with previous convictions are alleged against such persons and are not admitted in writing or through such person's advocate the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

(5) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused.

Warrant of Arrest.

Warrant after issue of summons.

98. Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

Summons disobeyed.

99. If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 97, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless a complaint or charge has been made upon oath.

Form, contents and duration of warrant of arrest.

100. (1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing the same and shall bear the seal of the court.

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

Court may direct security to be taken.

101. (1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder, treason or rape may in its discretion direct by indorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The indorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(*c*) the time at which he is to attend before the court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

Warrants to whom directed.

102. (1) A warrant of arrest may be directed to one or more police officers, or to one police officer and to all other police officers of the area within which the court has jurisdiction, or generally to all police officers of such area. But any court issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

Warrants may be directed to landholders, etc.

103. (1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to any landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of any escaped convict or person who has been accused of a cognizable offence and has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 101.

Execution of warrant directed to police officer.

104. A warrant directed to any police officer may also be executed by any other police officer whose name is indorsed upon the warrant by the officer to whom it is directed or indorsed.

Notification of substance of warrant.

105. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before the court without delay.

106. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 101 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Where warrant of arrest may be executed.

107. A warrant of arrest may be executed at any place in the Colony.

Forwarding of warrants for execution outside jurisdiction.

108. (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing the same, such court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any magistrate within the local limits of whose jurisdiction it is to be executed.

(2) The magistrate to whom such warrant is so forwarded shall indorse his name thereon, and, if practicable, cause it to be executed in the manner hereinbefore provided within the local limits of his jurisdiction.

Procedure in case of warrant directed to police officer for execution outside jurisdiction.

109. (1) When a warrant of arrest directed to a police officer is to be executed outside the local limits of the jurisdiction of the court issuing the same, he shall take it for indorsement to a magistrate within the local limits of whose jurisdiction it is to be executed.

(2) Such magistrate shall indorse his name thereon, and such indorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police officers shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the indorsement of the magistrate within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such indorsement in any place outside the local limits of the jurisdiction of the court which issued it.

Procedure on arrest of person outside jurisdiction.

110. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 101, be taken before the magistrate within the local limits of whose jurisdiction the arrest was made.

(2) Such magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court :

Provided that if such person has been arrested for an offence other than murder, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been indorsed under section 101 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 101.

Irregularities in warrant.

111. Any irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and the evidence produced on the part of the prosecution at any inquiry or trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if any such variance appears to the court to be such that the accused has been thereby deceived or misled, such court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him to bail.

Miscellaneous Provisions regarding Processes.

Power to take bond for appearance.

112. Where any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court.

Arrest for breach of bond for appearance.

113. When any person who is bound by any bond taken under this Code to appear before a court does not so appear, the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him.

Power of court to order prisoner to be brought before it.

114. (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison within the local limits of the jurisdiction of such court, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

Provisions of this Part generally applicable to summonses and warrants.

Powers of justices of the peace.

115. The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code or by a justice of the peace, and, save in so far as the same may be inconsistent with any other law, the powers of a magistrate or court in relation to the issuing or indorsing of a summons or warrant may be exercised by a justice of the peace.

SEARCH WARRANTS.

Power to issue search warrant.

116. Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed is in any building, ship, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrant.

117. Every search warrant may be issued and executed on a Sunday, and shall be executed between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

Persons in charge of closed place to allow ingress.

118. (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress into such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 25 shall be observed.

Detention of property seized.

119. (1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.

(3) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit or is authorised or required by law to dispose of it otherwise.

Provisions applicable to search warrants.

120. The provisions of sections 100 (1) and (3), 102, 104, 107, 108 and 109 shall, so far as may be, apply to all search warrants issued under section 116.

PROVISIONS AS TO BAIL.

Bail in certain cases.

121. (1) When any person, other than a person accused of murder, treason or rape, is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may be admitted to bail :

Provided that such officer or court may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(3) Notwithstanding anything contained in sub-section (1) of this section, the Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a subordinate court or police officer be reduced.

Bail bond.

122. Before any person is released on bail or on his own recognizance, a bond for such sum as the court or police officer, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer, as the case may be.

Discharge from custody.

123. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released, and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 121 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Deposit instead of recognizance.

124. When any person is required by any court or officer to execute a bond, with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government currency notes to such amount as the court or officer may fix in lieu of executing such a bond, and may permit a native to deposit any property.

Power to order sufficient bail when that first taken is insufficient.

125. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

Discharge of sureties.

126. (1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison.

Death of surety.

127. Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

Persons bound by recognizance absconding may be committed.

128. If it is made to appear to any court, by information on oath, that any person bound by recognizance is about to leave the Colony, the court may cause him to be arrested and may commit him to prison until the trial, unless the court shall see fit to admit him to bail upon further recognizance.

Forfeiture of recognizance.

129. (1) Whenever any person shall not appear at the time and place mentioned in any recognizance entered into by him, the court may by order indorse such recognizance and declare the same to be forfeited.

(2) On the forfeiture of any recognizance the court may issue its warrant of distress for the amount mentioned in such recognizance or for the imprisonment of such person and his surety or sureties for any term not exceeding six months, unless the amount mentioned in such recognizance be sooner paid or levied.

(3) A warrant of distress under this section may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property is found.

Appeal from and revision of orders.

130. All orders passed under the last preceding section by any magistrate shall be appealable to and may be revised by the Supreme Court.

Power to direct levy of amount due on certain recognizances.

131. The Supreme Court may direct any magistrate to levy the amount due on a recognizance to appear and attend at the Supreme Court.

JOINDER OF CHARGES.

Joinder of charges.

132. For every distinct offence of which any person is accused there shall be a separate charge or information, and every such charge or information shall be tried separately except in the the following cases :—

Three offences of same kind in one year.

(*a*) When a person is accused of more offences than one of the same kind committed within one year of each other, he may be charged with and tried at the same time for any number of them not exceeding three.

Occurring in one series of acts.

(*b*) If in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at the same time for every such offence.

When doubtful what offence has been committed.

(*c*) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

When more than one person accused of same offence.

(*d*) When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence and another of aiding and abetting or being accessory to or of attempting to commit such offence, such persons may be charged and tried together or separately as the court thinks fit.

PREVIOUS CONVICTION OR ACQUITTAL.

Persons convicted or acquitted not to be tried again for same offence.

133. A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

May be tried again on separate charge.

134. A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under paragraph (*b*) of section 132.

135. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which such person was convicted or acquitted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

Consequences supervening or not known at time of former trial.

136. A person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Where original court was not competent to try subsequent charge.

137. (1) In any inquiry, trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force—

Previous conviction, how proved.

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or

(*b*) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.

(2) A certificate in the form prescribed by the Governor given under the hand of an officer appointed by the Governor in that behalf, who shall have compared the finger prints of an accused person with the finger prints of a person previously convicted, shall be prima facie evidence of all facts therein set forth provided it is produced by the person who took the finger prints of the accused.

(3) A previous conviction in any place outside the Colony may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where

the conviction was had, containing a copy of the sentence or order, and the finger prints, or photographs of the finger prints of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

OFFENCES BY FOREIGNERS WITHIN COLONIAL WATERS.

Leave of Governor necessary before prosecution instituted.

138. (1) Proceedings for the trial of any person, who is not a British subject, for an offence committed on the open sea within three nautical miles of the coast of the Colony measured from low-water mark, shall not be instituted in any court except with the leave of the Governor and upon his certificate that it is expedient that such proceedings should be instituted.

(2) This section is subject to the following provisions :—

(*a*) Proceedings before a subordinate court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this section.

(*b*) It shall not be necessary to aver in any charge or information that the consent or certificate of the Governor required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial. The production of a document purporting to be signed by the Governor and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent and certificate required by this section.

(*c*) This section shall not prejudice or affect the trial of any act of piracy as defined by the Law of Nations.

(3) The term " offence " as used in this section means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

COMPELLING ATTENDANCE OF WITNESSES.

Summons for witness.

139. (1) If it is made to appear that material evidence can be given by or is in the possession of any person who will not voluntarily attend to give it or will not voluntarily produce the same, it shall be lawful for a court having cognizance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Nothing in this section shall be deemed to affect the provision of sections 123 and 124 of the Indian Evidence Act, 1872.

Warrant for witness who disobeys summons.

140. If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

Warrant for witness in first instance.

141. If the court is satisfied that such person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

Mode of dealing with witness arrested under warrant.

142. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such hearing.

Power of court to order prisoner to be brought up for examination.

143. (1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison within the local limits of its jurisdiction may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

Penalty for non-attendance of witness.

144. (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding twenty pounds.

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness within the local limits of the jurisdiction of such court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

(4) For good cause shown, the Supreme Court may remit or reduce any fine imposed under this section by a subordinate court.

EXAMINATION OF WITNESSES.

Power to examine person present in court and to recall witnesses.

145. Any court may at any stage of any inquiry, trial or other proceeding under this Code examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined; and the court shall examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

SECTION.

Evidence to be given on oath.

146. Every witness in any criminal cause or matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation:

Provided that the court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath; the fact of the evidence having been so taken being also recorded in the proceedings.

Refractory witnesses.

147. (1) Whenever any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence—

(*a*) refuses to be sworn; or

(*b*) having been sworn, refuses to answer any question put to him; or

(*c*) refuses or neglects to produce any document or thing which he is required to produce; or

(*d*) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

(2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.

(3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

Cases when wife or husband may be called without the consent of the accused.

148. In any inquiry or trial the wife or husband of the person charged shall be a competent witness for the prosecution or defence without the consent of such person—

(*a*) in any case where the wife or husband of a person charged may, under any law in force for the time being be called as a witness without the consent of such person;

(*b*) in any case where such person is charged with an offence under Chapter XV of the Penal Code;

(*c*) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.

COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

Issue of commission for examination of witness.

149. (1) Whenever in the course of any inquiry, trial or other proceeding under this Code, the Supreme Court is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court may issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

Parties may examine witnesses.

150. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate by advocate, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

Power of magistrate to apply for issue of commission.

151. Whenever in the course of any inquiry, trial or other proceeding under this Code before any magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such magistrate shall apply to the Supreme Court, stating the reasons for the application; and the Supreme Court may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

152. (1) After any commission issued under section 149 or section 151 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the Supreme Court, and the commission, the return thereto,

and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another court.

Adjournment of inquiry or trial.

153. In every case in which a commission is issued under section 149 or section 151 the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

EVIDENCE FOR DEFENCE.

Competency of accused and husband or wife as witnesses in criminal cases.

154. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person :

Provided as follows :—

Own application.

(1) A person so charged shall not be called as a witness in pursuance of this section except upon his own application.

No comment if not called as witness.

(2) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution.

Spouses.

(3) The wife or husband of the person charged shall not, save as hereinbefore mentioned, be called as a witness except upon the application of the person so charged.

Communications during marriage.

(4) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.

Cross-examination.

(5) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

No question to show commission of offence not charged.

(6) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

Exceptions.

(*a*) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(*b*) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(*c*) he has given evidence against any other person charged with the same offence.

Evidence from box.

(7) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence.

Statement by person charged.

(8) Nothing in this section shall affect the provisions of section 218 or any right of the person charged to make a statement without being sworn.

Procedure where person charged is the only witness called.

155. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply.

156. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply:

Provided that the Attorney General or Solicitor General when appearing personally as advocate for the prosecution shall in all cases have the right of reply.

PROCEDURE IN CASE OF THE LUNACY OR OTHER INCAPACITY OF AN ACCUSED PERSON.

Inquiry by court as to lunacy of accused.

157. (1) When in the course of a trial or preliminary investigation the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness.

(2) If the court is of opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall report the case to the Colonial Secretary, and the Governor if satisfied by medical certificate may order the accused to be confined in a lunatic asylum or other suitable place of custody, and the court shall issue a warrant in accordance with such order.

Defence of lunacy at preliminary investigation.

158. When the accused person appears to be of sound mind at the time of a preliminary investigation, the court, notwithstanding that it is alleged that at the time when the act was committed, in respect of which the accused person is charged, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial on information, the court shall so commit him.

Defence of lunacy on trial.

159. Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

When such special finding is made the court shall report the case for the order of the Governor and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

The Governor may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody.

Resumption of trial or investigation.

160. Whenever any preliminary investigation or trial is postponed the court may at any time resume the preliminary investigation or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary investigation or trial shall proceed.

But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Certificate of medical officer of asylum as to sanity to be evidence.

161. If a person is confined in a lunatic asylum under the provisions of this Code and the medical officer in charge of such asylum certifies that the accused lunatic is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of such medical officer shall be receivable in evidence.

Procedure when accused does not understand proceedings.

162. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the preliminary investigation or trial; and, in the case of a court other than the Supreme Court, if such investigation results in a committal for trial, or if such trial results in a conviction, the proceedings shall be forwarded to the Supreme Court with a report of the circumstances, and the Supreme Court shall pass thereon such order as it thinks fit.

JUDGMENT.

Mode of delivering judgment.

163. (1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence.

(2) The accused person shall, if in custody, be brought before the court, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the provisions of section 367.

Contents of judgment.

164. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced.

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

(4) Notwithstanding anything hereinbefore contained, in trials by jury the court need not write a judgment but shall record the heads of the charge to the jury.

Copy of judgment, etc., to be given to accused on application.

165. (1) On the application of the accused person a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. Such copy shall be given free of cost.

(2) In a trial by jury a copy of the heads of the charge to the jury shall, on the application of the accused person, be given to him without delay and free of cost.

COSTS AND COMPENSATION.

Costs against accused.

166. (1) It shall be lawful for a judge of the Supreme Court or a magistrate of a subordinate court of the first, second or third class to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed :

Provided that such costs shall not exceed fifty pounds in the case of the Supreme Court or twenty-five pounds in the case of a subordinate court.

Costs against private prosecutor.

(2) It shall be lawful for a judge of the Supreme Court or a magistrate of a subordinate court of the first, second or third class who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, to order such private prosecutor to pay to the accused such reasonable costs as to such judge or magistrate may seem fit :

Provided that such costs shall not exceed fifty pounds in the case of an acquittal or discharge by the Supreme Court or twenty-five pounds in the case of an acquittal or discharge by a subordinate court :

Provided further that no such order shall be made if the judge or magistrate shall consider that the private prosecutor had reasonable grounds for making his complaint.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 168.

(4) In this section—

" Public prosecutor " means any person prosecuting for or on behalf of the Crown or for or on behalf of a public authority.

" Private prosecutor " means any prosecutor other than a public prosecutor.

Order to pay costs appealable.

167. An appeal shall lie from any order awarding costs under the last preceding section, if made by a magistrate to the Supreme Court and if by a judge to His Majesty's Court

of Appeal for Eastern Africa. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.

Compensation in case of frivolous or vexatious charge.

168. If on the dismissal of any case any court shall be of opinion that the charge was frivolous or vexatious, such court may order the complainant to pay to the accused person a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge in addition to his costs.

Costs and compensation to be specified in order, how recoverable.

169. The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recovered under this Code; and in default of payment of such costs or compensation or of distress as hereinafter provided the person in default shall be liable to imprisonment with or without hard labour for a term not exceeding three months unless such costs or compensation shall be sooner paid.

Power of courts to award expenses or compensation out of fine.

170. (1) Whenever any court imposes a fine, or confirms on appeal, revision or otherwise a sentence of fine, or a sentence of which a fine forms part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

Restitution of Property.

Property found on accused person.

171. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

(*a*) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or

(*b*) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Property stolen.

172. (1) Where any person is convicted of having stolen any property or having obtained it fraudulently or by false pretences, the court convicting him may order that the property or a part thereof be restored to the person who appears to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof may be, of any sum named in such order.

(2) This section shall not apply to—

(*a*) any valuable security which has been *bonâ fide* paid or discharged by any person liable to pay or discharge the same; or

(*b*) any negotiable instrument which shall have been *bonâ fide* received by transfer or delivery by any person for a just and valuable consideration without notice, or without reasonable cause to suspect that it has been stolen or dishonestly obtained.

MISCELLANEOUS PROVISIONS.

The person accused of any offence may be convicted of attempt.

173. When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

When offence proved is included in offence charged.

174. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, although he was not charged with it.

Person charged with burglary, etc., may be convicted of kindred offence.

175. If on any trial for any of the offences mentioned in Chapter XXIX of the Penal Code, the facts proved in evidence authorise a conviction for some other of the said offences and not the offence wherewith the accused is charged, he may be found guilty of the said other offence, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offence.

Conviction of receiving on charge of stealing.

176. When a person is charged with stealing anything and it is proved that he received the thing knowing the same to have been stolen, he may be convicted of receiving, although he was not charged with that offence.

Conviction of false pretences on charge of stealing.

177. When a person is charged with stealing anything and it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code, to obtaining it by false pretences with intent to defraud, he may be convicted of obtaining it by false pretences although he was not charged with that offence.

Conviction of stealing on charge of false pretences.

178. When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of stealing it although he was not charged with that offence.

Charge of stealing by persons in public service, clerks and servants and directors or officers of companies.

179. When a person is charged with any offence under sections 257, 258 or 259 of the Penal Code it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates.

Person charged with rape may be convicted of kindred offence.

180. If on any trial for rape or for defilement of a girl under the age of sixteen years the facts proved in evidence authorise a conviction for an offence under section 131 of the Penal Code or for an indecent assault and not the offence wherewith the accused is charged, he may be convicted of an offence under section 131 of the Penal Code or of indecent assault, as the case may be, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such last-mentioned offence or with indecent assault.

Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs.

181. If on any trial for misdemeanour the facts proved in evidence amount to a felony, the accused shall not be therefore acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court shall think fit, in its discretion, to direct such person to be prosecuted for felony, whereupon such person may be dealt with as if not previously put on trial for misdemeanour.

Right of accused to be defended.

182. Any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Code in any such court, may of right be defended by an advocate.

PART V.—MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

GENERAL.

Evidence to be taken in presence of accused.

183. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any).

SUBORDINATE COURTS.

Manner of recording evidence before magistrate.

184. In inquiries and trials (other than trials under section 187) by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner :—

(*a*) The evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record ;

(*b*) Such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative ;

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

Interpretation of evidence to accused or his advocate.

(3) If the evidence is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence shall be interpreted to him in the language in which it was given or in a language which he understands.

185. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in the language of the court.

(2) If he appears by advocate and the evidence is given in a language other than the language of the court, and not understood by the advocate, it shall be interpreted to such advocate in the language of the court.

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as appears necessary.

(4) The language of the Supreme Court shall be English, and the language of a subordinate court, other than a subordinate native court, shall be English or Swahili or a vernacular language.

Remarks respecting demeanour of witness.

186. When a magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Procedure in case of minor offences.

187. (1) Notwithstanding anything contained in this Code, any magistrate having jurisdiction to try any of the offences mentioned in the next succeeding sub-section may try any such offence without recording the evidence as hereinbefore provided, but in any such case he shall enter, in such form as the Supreme Court may direct, the following particulars :—

(*a*) The serial number;

(*b*) The date of the commission of the offence;

(*c*) The date of the complaint;

(*d*) The name of the complainant;

(*e*) The name, parentage and residence of the accused;

(*f*) The offence complained of and the offence (if any) proved, and in cases coming under paragraphs (*d*), (*e*) or (*f*) of the next succeeding sub-section the value of the property in respect of which the offence has been committed;

(*g*) The plea of the accused;

(*h*) The finding and, where evidence has been taken, a judgment embodying the substance of such evidence;

(*i*) The sentence or other final order;

(*j*) The date on which the proceedings terminated.

(2) The offences referred to in the preceding sub-section are as follows :—

(*a*) Offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding fifty pounds;

Cap. 96. (*b*) Offences against the Weights and Measures Ordinance;

(*c*) Common assault under section 228 of the Penal Code;

(*d*) Theft under Chapter XXVI of the Penal Code where the value of the property stolen does not exceed five pounds;

(*e*) Receiving or retaining stolen property under Chapter XXXI of the Penal Code where the value of such property does not exceed five pounds;

(*f*) Malicious injury to property where the value of such property does not exceed five pounds;

(*g*) Any other offence which the Governor may, by order in the Gazette, direct to be tried in accordance with the provisions of this section;

(*h*) Aiding, abetting, counselling or procuring the commission of any of the foregoing offences;

(*i*) Attempting to commit any of the foregoing offences.

(3) When in the course of a trial under the provisions of this section it appears to the magistrate that the case is of a character which renders it undesirable that it should be so tried, the magistrate shall recall any witnesses and proceed to rehear the case in the manner provided by the preceding sections of this Part.

(4) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this section.

Conviction or commitment on evidence partly recorded by one magistrate and partly by another.

188. Whenever any magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence so recorded by his predecessor, or

partly recorded by his predecessor and partly by himself, or he may resummon the witnesses and recommence the inquiry or trial :

Provided that—

(*a*) in any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard and shall be informed of such right by the second magistrate when he commences his proceedings;

(*b*) the Supreme Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

SUPREME COURT.

Record of evidence in Supreme Court.

189. The Supreme Court may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the court, and the judges of such court shall take down the evidence or the substance thereof in accordance with such rules.

PART VI.—PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS.

PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES.

Non-appearance of complainant at hearing.

190. If, in any case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court by virtue of a warrant, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit, but shall not commit him to prison unless the charge has been made on oath.

Appearance of both parties.

191. If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 97, the court shall proceed to hear the case.

Withdrawal of complaint.

192. If a complainant, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused.

Adjournment.

193. Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused person to go at large, or, if the charge has been made on oath, but not otherwise, may commit him to prison, or may discharge him upon his entering into a recognizance with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned :

Provided that no such adjournment shall be for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

Non-appearance of parties after adjournment.

194. (1) If at the time or place to which the hearing or further hearing shall be adjourned, the accused person shall not appear before the Court which shall have made the order of adjournment, it shall be lawful for such court, unless the accused person is charged with felony, to proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) Any sentence passed under sub-section (1) shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall indorse the date thereof on the back of the warrant of commitment.

(4) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

Accused to be called upon to plead.

195. (1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person refuses to plead, the court shall order a plea of " not guilty " to be entered for him.

Procedure on plea of not guilty.

196. If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence (if any).

The accused person or his advocate may put questions to each witness produced against him.

If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.

The defence.

197. (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall ask him if he wishes to say anything in answer to the charge, or has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any

fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses.

Evidence in reply.

198. If the accused person adduces in his defence any evidence, other than evidence as to character, the prosecutor may adduce evidence in reply thereto. But, except with the leave of the court, the prosecutor shall not in any case be allowed to make any observations by way of reply to the evidence adduced by the accused nor, without such leave as aforesaid, shall the accused in any case be allowed to make any observation on evidence adduced by the prosecutor in reply.

Variance between charge and evidence.

199. Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material, if it is proved that the charge was in fact made within the time (if any) limited by law for the making thereof.

But if any variance between the charge and the evidence appears to the court to be such that the accused has been thereby deceived or misled, the court may adjourn the hearing and allow any witness to be recalled, and such questions to be put to him as by reason of the terms of the charge may have been omitted.

The court may make an amendment of the charge on such terms as may be just.

The decision.

200. The court having heard both the complainant and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law, or shall dismiss the case.

Drawing up of conviction or order.

201. The conviction or order may, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the clerk or other officer of the court.

Order of dismissal bar to further procedure.

202. The production of a copy of the order of dismissal, certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent information or complaint for the same matter against the same accused person.

LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS BEFORE SUBORDINATE COURTS.

Limitation of time for summary trials in certain cases.

203. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months and/or a fine of fifty pounds, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

Procedure in case of offence proving unsuitable for summary trial.

204. (1) If in the course of a trial before a subordinate court it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the Supreme Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused person for trial upon information before the Supreme Court, and in such case he shall follow the procedure hereinafter directed in relation to preliminary inquiries as to offences triable by the Supreme Court.

(2) If such magistrate is not empowered to commit for trial he shall submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under section 77.

PART VII.—SPECIAL PROVISIONS RELATING TO THE TRIAL OF EUROPEANS.

Method of inquiry into certain offences committed by Europeans.

205. Save as is hereinafter provided, every case in which a European shall appear before a subordinate court accused of an offence punishable with imprisonment which may exceed six months shall be inquired into under Part VIII as if the offence were one triable exclusively by the Supreme Court, and if there are sufficient grounds for committing the accused for trial the subordinate court shall commit him for trial by the Supreme Court.

Offences committed by Europeans triable by a subordinate court.

206. Notwithstanding anything contained in the preceding section, a subordinate court of the first or second class may try and pass sentence according to law upon a European in any of the following cases :—

(*a*) If the maximum term of imprisonment prescribed by law as a punishment for the offence alleged does not exceed three years and the court, after hearing the evidence for the prosecution, is of the opinion

that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court;

(*b*) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed six months, the court considers for reasons to be recorded that there is no evidence against the accused of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for six months with or without fine;

(*c*) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed three years, the court considers for reasons to be recorded that there is not sufficient evidence of the commission of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for three years with or without fine, and the court is of opinion that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court;

(*d*) Cases in which, notwithstanding the provisions herein contained, a subordinate court is given jurisdiction over Europeans by any other Ordinance or law;

(*e*) If the offence alleged is triable under the provisions of section 187.

Jurisdiction of subordinate courts of the third class in regard to Europeans.

207. Subordinate courts of the third class shall not have jurisdiction to try Europeans under this Part, but may take cognizance of an offence committed by a European in any case in which it could take cognizance of a like offence if committed by another person, but so that if any subordinate court of the third class issue process for the purpose of compelling the appearance of any European accused of an offence, such process shall be made returnable before a subordinate court of the first or second class.

Right to be tried as European may be relinquished.

208. If an accused person does not claim to be a European when before the subordinate court by which he is tried or by which he is committed for trial, or if when such claim has been made and disallowed by the committing magistrate it is not made again before the Supreme Court, he shall be held to have relinquished his right to be dealt with as a European and shall not assert it at any subsequent stage of the same case.

Europeans committed for trial to be tried by jury of Europeans.

209. Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans.

On trials for murder or treason the number of the jury shall be twelve; on trials for other offences the number of the jury shall be nine.

European accused jointly with non-European.

210. In any case in which a European is accused jointly with a person not being a European, and such persons are committed for trial, they shall be tried together, and the procedure at the trial shall be the same as it would have been had the European been tried separately.

Grounds of claim to be dealt with as a European to be stated and inquired into.

211. (1) When any person claims to be dealt with under this Part, he shall state the grounds of such claim to the subordinate court before which he is brought for the purpose of inquiry or trial, and such court shall, if necessary, inquire into the truth of such statement and allow the person making it reasonable time within which to prove that it is true and shall then decide whether he is or is not a European.

(2) If any such person is convicted by such subordinate court and appeals from such conviction, the burden of proving that the decision of the subordinate court on such claim was wrong shall lie upon such person.

(3) The question of any person claiming to be dealt with under this Part as a European is a question of fact for the court.

Saving of proceedings when non-European is tried under this Part.

212. When a person who is not a European is dealt with under this Part and does not object, the inquiry, commitment, trial, finding or sentence, as the case may be, shall not by reason thereof be invalid.

PART VIII.—PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE SUPREME COURT.

Preliminary Inquiry by Subordinate Courts.

Power to commit for trial.

213. Any magistrate empowered to hold a subordinate court of the first, second or third class may commit any person for trial to the Supreme Court :

Provided that it shall not be competent for a magistrate empowered to hold a subordinate court of the third class to commit a European for trial to the Supreme Court.

Court to hold preliminary inquiry.

214. Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the subordinate court is of opinion that it is not suitable to be disposed of upon summary trial, a preliminary inquiry shall be held according to the provisions hereinafter contained by a subordinate court, locally and otherwise competent.

Depositions.

215. (1) When the accused person charged with such an offence comes before a subordinate court, on summons or warrant or otherwise, the court shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of those who know the facts and circumstances of the case.

Statements of witnesses so taken down in writing are termed depositions.

(2) The accused person may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness's depositions.

(3) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness.

(4) The deposition of each witness shall be read over to such witness and shall be signed by him and by the magistrate holding the inquiry.

Admission of signed reports by medical officer or Government analyst.

216. (1) At any preliminary inquiry under this Part any document purporting to be a report under the hand of a medical officer or a Government analyst upon any examination or analysis carried out by him shall, if it bears his signature, be admitted in evidence.

(2) The magistrate may presume that the signature to any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it.

Variance between evidence and charge.

217. No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence of the prosecution, shall be allowed; but if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person, adjourn the inquiry and allow any witness to be recalled, and such questions to be put to him as by reason of the terms of the charge may have been omitted.

Remand.

218. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen days at any one time, to some prison or other place of security. Or, if the remand is for not more than three days, the court may by word of mouth order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.

During a remand the court may at any time order the accused to be brought before it.

The court may on a remand admit the accused to bail.

Provisions as to taking statement of accused person.

219. (1) After the examination of the witnesses called on behalf of the prosecution, and provided that the court does not consider that the case should be dealt with in accordance with the provisions of section 221, the magistrate shall read the charge to the accused person and explain the nature thereof in ordinary language, and inform him that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf.

After doing so the magistrate shall then address to him the following words or words to the like effect :—

> " Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial."

(2) Before the accused person makes any statement in answer to the charge, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(3) Whatever the accused person states in answer to the charge shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to his statement.

(4) When the whole is made conformable to what he declares is the truth, the statement shall be attested by the magistrate, who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign or attest by his mark such record. If he refuses, the court shall add a note of his refusal, and the statement may be used as if he had signed or attested it.

Evidence in defence.

220. (1) Immediately after the accused person shall so have had opportunity of making his answer to the charge, the court shall ask him whether he desires to call any witnesses, and the depositions of such witnesses as the accused person shall call and who shall appear on his behalf shall then be taken in like manner as in the case of the witnesses for the prosecution, and every witness as aforesaid, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognizance to appear and give evidence at the trial of such accused person.

(2) If the accused person states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognizance in the same manner as witnesses under sub-section (1).

Discharge of accused person.

221. If the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts :

Provided always that nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, in the course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

Commitment for trial.

222. If the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the Supreme Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial, although out of the jurisdiction of such court.

Summary adjudication.

223. If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the provisions of Part VI, hear and finally determine the matter and either convict the accused person or dismiss the charge :

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all witnesses for the prosecution whom he has not already cross-examined.

Complainant and witnesses to be bound over.

224. When the accused person is committed for trial before the Supreme Court, the subordinate court committing him shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence if required, at any further examination concerning the charge which may be held by direction of the Attorney General.

Refusal to be bound over.

225. If a person refuses to enter into such recognizance, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognizance. But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.

Accused person entitled to copy of depositions.

226. A person who has been committed for trial before the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions on payment of a reasonable sum, not exceeding fifty cents for every hundred words, or, if the court thinks fit, without payment.

The court shall at the time of committing him for trial inform the accused person of the effect of this provision.

Binding over of witnesses conditionally.

227. (1) Where any person charged before a subordinate court with an offence triable upon information before the Supreme Court is committed for trial, and it appears to such subordinate court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the accused person having pleaded guilty to the charge, or of the evidence of the witness being merely of a formal nature, the subordinate court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the Supreme Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General or the person committed for trial may give notice at any time before the opening of the sessions of the Supreme Court to the committing subordinate court and at any time thereafter to the registrar of the Supreme Court that he desires the witness to attend at the trial, and any such court or registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance.

The subordinate court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(3) Any documents or articles produced in evidence before the subordinate court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the registrar of the Supreme Court.

PRESERVATION OF TESTIMONY IN CERTAIN CASES.

Taking the depositions of persons dangerously ill.

228. Whenever it appears to any magistrate that any person, dangerously ill or hurt and not likely to recover, is able and willing to give material evidence relating to any offence triable by the Supreme Court, and it shall not be practicable to take the deposition in accordance with the provisions of this Code of the person so ill or hurt, such magistrate may take in writing the statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

Notices to be given.

229. If the statement relates or is expected to relate to an offence for which any person is under a charge or committal for trial, reasonable notice of the intention to take the same shall be served upon the prosecutor and the accused person, and if the accused person is in custody he may, and shall if he so requests, be brought by the person in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken.

Transmission of statements.

230. If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the registrar of the Supreme Court, and a copy thereof shall be transmitted to the Attorney General.

Use of statement in evidence.

231. Such statement so taken may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or if the court is satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making same.

PROCEEDINGS AFTER COMMITTAL FOR TRIAL.

Transmission of records to Supreme Court and Attorney General.

232. In the event of a committal for trial the written charge (if any), the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the registrar of the Supreme Court, and an authenticated copy of the depositions and statement aforesaid shall be also transmitted to the Attorney General.

Power of Attorney General to direct further investigation.

233. If, after receipt of the authenticated copy of the depositions and statement provided for by the last preceding section and before the trial before the Supreme Court, the Attorney General shall be of opinion that further investigation is required before such trial, it shall be lawful for the Attorney General to direct that the original depositions be remitted to the court which committed the accused person for trial, and such court may thereupon re-open the case and deal with it in all respects as if such person had not been committed for trial as aforesaid; and if the case be one which may suitably be dealt with under the powers possessed by such court, it may, if thought expedient by the court, or if the Attorney General so directs, be so tried and determined accordingly.

Powers of Attorney General as to additional witnesses.

234. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the Supreme Court, the Attorney General shall be of opinion that there is in any case committed for trial any

material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General—

(*a*) may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided; or

(*b*) may call such witness or witnesses before the Supreme Court notwithstanding that such witness or witnesses did not give evidence before the court which committed the accused; provided that in such case he shall give to the Registrar of the Supreme Court and to the accused person notice of his intention to call such witness or witnesses together with a copy of the evidence which each such witness will give.

Return of depositions in certain cases.

235. If the Attorney General shall be of opinion that there is not sufficient evidence to warrant a committal for trial before the Supreme Court, he may cause the depositions to be returned to the court which committed the accused, and such court may thereupon re-open the case and deal with it in all respects as if such person had not been committed for trial as aforesaid; and if the case be one which may suitably be dealt with by such court it may be so tried and determined accordingly.

Filing of an information.

236. If, after the receipt of the authenticated copy of the depositions as aforesaid, the Attorney General shall be of the opinion that the case is one which should be tried upon information before the Supreme Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Attorney General shall be filed in the registry of the Supreme Court.

Notice of trial.

237. The registrar or his deputy shall indorse on or annex to every information filed as aforesaid, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the Supreme Court at which

the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be :—

" A. B.

" Take notice that you will be tried on the information whereof this is a true copy at the sessions of the Supreme Court to be held at on the day of 19 ."

Copy of information and notice of trial to be served.

238. The registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial indorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the court or police officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and three days at least before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the information and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said information and notice of trial with someone of his household for him at his dwelling-house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling-house or dwelling-houses of the accused person or of any of his bail :

Provided always that nothing herein contained shall prevent any person committed for trial, and in custody at the opening of or during any sessions of the Supreme Court, from being tried thereat, if he shall express his assent to be so tried and no specal objection be made thereto on the part of the Crown.

Return of service.

239. The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the registrar a return of the mode of service thereof.

Postponement of trial.

240. It shall be lawful for the Supreme Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person to the next sessions of the court held in the district, or to a subsequent sessions, and to respite the recognizances of the complainant and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to prosecute and give evidence at such subsequent sessions would have had.

RULES AS TO INFORMATIONS BY THE ATTORNEY GENERAL.

Informations by Attorney General.

241. All informations drawn up in pursuance of section 236 of this Code shall be in the name of and (subject to the provisions of section 81) signed by the Attorney General, and when so signed shall be as valid and effectual in all respects as an indictment presented by a Grand Jury in England.

Form of information.

242. Every information shall bear date of the day when the same is signed, and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form :—

IN THE SUPREME COURT OF KENYA AT

The day of , 19 .

At the sessions holden at on the day of , 19 , the Court is informed by the Attorney General on behalf of our Lord the King that A.B. is charged with the following offence (or offences).

General provisions as to informations.

243. The following provisions shall apply to all informations, and, notwithstanding any rule of law or practice, an information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code.

Offence to be specified with necessary particulars.

(1) Every information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

Use of figures and abbreviations.

(2) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby.

Mode in which offences are to be charged.

(3) (i) A description of the offence charged in an information, or, where more offences than one are charged in an information, of each offence so charged, shall be set out in the information in a separate paragraph termed a count.

(ii) A count of an information shall commence with a statement of the offence charged, called the statement of offence.

(iii) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence.

(iv) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary :

Provided that where any rule of law or any Ordinance or statute limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required.

(v) The forms set out in the Second Schedule to this Code or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case.

(vi) Where an information contains more than one count, the counts shall be numbered consecutively.

Provision as to statutory offences.

(4) (i) Where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the

doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(ii) It shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from or qualification to the operation of the enactment creating the offence.

Description of property.

(5) (i) The description of property in a count in an information shall be in ordinary language, and such as to indicate with reasonable clearness property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(ii) Where property is vested in more than one person, and the owners of the property are referred to in an information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants," "Trustees," "Commissioners" or "Club," or other such name, it shall be sufficient to use the collective name without naming any individual.

(iii) Property belonging to or provided for the use of any public establishment, service or department, may be laid as the property of His Majesty the King.

(iv) Coin and bank notes may be described as money; and any averment as to money, so far as regards the description of property, shall be

sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved); and in the cases of stealing and defrauding by false pretences, by proof that the accused dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly.

Description of persons.

(6) The description or designation in an information of the accused, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation, and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as " a person unknown."

Description of document.

(7) Where it is necessary to refer to any document or instrument in an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

General rule as to description.

(8) Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

Statement of intent.

(9) It shall not be necessary in stating any intent to defraud, deceive, or injure, to state an intent to defraud, deceive, or injure any particular person, where the enactment creating the offence does not

make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Charge of previous convictions.

(10) Where a previous conviction of an offence is charged in an information it shall be charged at the end of the information by means of a statement that the accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

Powers of Chief Justice.

244. The Chief Justice may, with the approval of the Governor in Council, make rules varying or annulling the rules contained in the last preceding section, and may make further rules with respect to the matters dealt with in those rules, and those rules shall have effect subject to any modifications or additions so made.

PART IX.—PROCEDURE IN TRIALS BEFORE THE SUPREME COURT.

General.

Practice of Supreme Court in its criminal jurisdiction.

245. The practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of His Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

Mode of Trial.

Trials before Supreme Court to be by jury or with assessors.

246. Subject to the provisions of Part VII, all trials before the Supreme Court shall be with the aid of assessors.

Number of assessors.

247. When the trial is to be held with the aid of assessors, the number of assessors shall be three.

List of Jurors and Assessors.

Preparation of list of jurors and assessors.

248. The registrar of the Supreme Court shall, before the first day of March in each year, and subject to such rules as the Supreme Court may from time to time prescribe, prepare a list of all persons in the Colony other than natives of African extraction liable to serve as jurors or assessors.

Liability to serve.

249. Subject to the exemptions in the next succeeding section contained, all male persons between the ages of twenty-one and sixty shall be liable to serve as assessors, and all male persons of European extraction between the ages of twenty-one and sixty shall be liable also to serve as jurors, at any trial held by the Supreme Court within the Colony :

Provided that the Supreme Court may from time to time make rules regulating the area within which a person may be summoned to serve as a juror or assessor.

Exemptions.

250. The following persons are exempt from liability to serve as jurors or assessors, namely :—

(*a*) Members of the Executive Council;

(*b*) Members of the Legislative Council;

(*c*) The Clerk of the Legislative Council and the persons appointed to act as official reporters to that Council;

(*d*) Persons actively discharging the duties of priests or ministers of their respective religions;

(*e*) Physicians, surgeons and apothecaries in active practice;

(*f*) Legal practitioners in active practice;

(*g*) Officers and others in His Majesty's Army, Navy, or Air Force on full pay;

(*h*) Members of the Police Force;

(*i*) Persons exempted from personal appearance in court under the provisions of the Civil Procedure Ordinance, 1924, or any rules made thereunder;

(*j*) Persons disabled by mental or bodily infirmity;

(*k*) Other persons exempted by the Governor from liability to serve as jurors or assessors.

Publication of list.

251. (1) A copy of the list made by the registrar of persons liable to serve as jurors or assessors shall be published in the Gazette in the first issue thereof in March, and extracts therefrom containing the names of the persons liable to serve as jurors or assessors residing in each province or district shall be exposed to public inspection at the offices of the provincial or district commissioner of each province or district respectively.

(2) To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by a judge of the Supreme Court and such magistrate as the Supreme Court may appoint at a time and place to be mentioned in such notice.

Revision of list.

252. (1) For the hearing of objections to the list a judge of the Supreme Court shall sit with the magistrate, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 250, and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the judge and the magistrate, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the judge and magistrate and sent to the registrar of the Supreme Court.

(4) Any order of the judge and magistrate as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived, until the list is next revised.

(6) The list so prepared and revised shall be again revised once in every year.

ATTENDANCE OF JURORS AND ASSESSORS.

Summoning of jurors or assessors.

253. (1) The registrar of the Supreme Court shall ordinarily, seven days at least before the day which from time to time may be fixed for holding a sessions of the Supreme Court, send a letter to a magistrate holding a subordinate court of the first class, having jurisdiction in the province or district in which such sessions are to be held, requesting him to summon as many persons as seem to the judge who is to preside at the sessions to be needed for trials by jury and trials with the aid of assessors at the said sessions.

(2) In the case of persons named in the said list, the names of the persons to be summoned shall be drawn by lot by such magistrate in open court, excluding those who have served within six months unless the number required cannot be made up without them.

Form of summons.

254. Every summons to a juror or an assessor shall be in writing, and shall require his attendance as a juror or an assessor, as the case may be, at a time and place to be therein specified.

Excuses

255. The Supreme Court may for reasonable cause excuse any juror or assessor from attendance at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that the jurors or assessors who have served at such trial shall not be summoned to serve again as jurors or assessors for a period of twelve months.

List of jurors and assessors attending.

256. (1) At each sessions the Supreme Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such sessions, and such list shall be kept with the list of the jurors and assessors as revised under section 252.

(2) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

257. (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Supreme Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the Supreme Court to a fine not exceeding twenty pounds.

(2) Such fine unless paid shall be levied by a magistrate empowered to hold a subordinate court of the first class by attachment and sale of any movable property belonging to such juror or assessor within the local limits of the jurisdiction of such magistrate.

(3) For good cause shown, the Supreme Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale a juror or assessor may, by order of the Supreme Court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

ARRAIGNMENT.

Pleading to information.

258. The accused person to be tried before the Supreme Court upon an information shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the information shall be read over to him by the registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court, and such accused person shall be required to plead instantly thereto, unless, where the accused person is entitled to service of a copy of the information, he shall object to the want of such service, and the court shall find that he has not been duly served therewith.

Orders for amendment of information, separate trial, and postponement of trial.

259. (1) Every objection to any information for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

(2) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice. All such amendments shall be made upon such terms as to the court shall seem just.

(3) Where an information is so amended, a note of the order for amendment shall be indorsed on the information, and the information shall be treated for the purposes of all proceeding in connection therewith as having been filed in the amended form.

(4) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of such information.

(5) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

(*a*) if such order is made during a trial with a jury or during a trial with assessors the court may order that the jury or the assessors are to be discharged from giving a verdict or opinions, as the case may be, on the count or counts the trial of which is postponed, or on the information, as the case may be; and

(*b*) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the jury or assessors, if any, have been discharged) as if the trial had not commenced; and

(*c*) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit.

(7) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Quashing of information

260. If any information does not state, and cannot by any amendment authorised by the last preceding section be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

A written statement of every such motion shall be delivered to the registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

Procedure in case of previous convictions.

261. Where an information contains a count charging an accused person with having been previously convicted for any offence, the procedure shall be as follows:—

(*a*) The part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously

convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

(*b*) If he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;

(*c*) If he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the jury, or the court and the assessors, as the case may be, shall then hear evidence concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again :

Provided, however, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his own good character, it shall be lawful for the advocate for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before a verdict of guilty is returned, and the jury, or the court and assessors, as the case may be, shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Plea of "not guilty".

262. Every accused person, upon being arraigned upon any information, by pleading generally thereto the plea of "not guilty" shall, without further form, be deemed to have put himself upon the country for trial.

Plea of autrefois acquit and autrefois convict.

263. Any accused person against whom an information is filed may plead—

(*a*) that he has been previously convicted or acquitted, as the case may be, of the same offence; or

(*b*) that he has obtained the King's pardon for his offence.

If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.

Refusal to plead.

264. If any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court, if it thinks fit, shall order the registrar to enter a plea of " not guilty " on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the Governor.

The Governor may order such accused person to be confined in a lunatic asylum, prison, or other suitable place for safe custody.

Plea of " guilty ".

265. If the accused pleads " guilty " the plea shall be recorded and he may be convicted thereon.

Proceedings after plea of " not guilty ".

266. If the accused pleads " not guilty," or if a plea of " not guilty " is entered in accordance with the provisions of section 264, the court shall proceed to choose jurors or assessors, as hereinafter directed, and to try the case :

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the court thinks fit.

Power to postpone or adjourn proceedings.

267. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

During a remand the court may at any time order the accused to be brought before it.

The court may on a remand admit the accused to bail.

TRIAL BY JURY.

Choosing the jury.

268. At the sitting of the Supreme Court to try criminal cases triable by jury the names of all the jurors summoned shall be written on separate pieces of card or paper of equal size and put into a box, and, whenever a jury is required, the registrar or other officer of the court shall, in open court, draw from the box by lot until the required number of jurors appear, who, after all just causes of challenge allowed, shall remain as fair and indifferent. The same procedure shall be followed whenever it shall be necessary to form a new jury :

Provided that if a case be brought on for trial during the time that a jury in any other case may be deliberating, a new jury may be drawn from the residue of the cards in the box.

Deficiency of jurors.

269. Whenever there shall be a deficiency of jurors, or when the number of trials before the court renders the attendance of one set of jurors for the whole of any sessions oppressive, it shall be lawful for the court to issue fresh orders, if necessary, and, subject to all rights of challenge, to put upon the jury so many men of the bystanders as shall be sufficient to make up the full number thereof, and it shall not be an objection to any such talesman that his name is not upon any jurors' list.

Warning accused to challenge.

270. When the jurors are ready to be sworn, the registrar or other officer of the court shall address the accused person as follows :—" The jurors who are to try you are now about to be sworn; if you object to any of them, you must do so as they come to the Book to be sworn, and before they are sworn, and you shall be heard."

Peremptory challenges

271. There shall be no challenge to the array, but every accused person either personally or by his advocate shall be allowed to challenge six of the jurors by way of peremptory challenge and without being subject to assign any reason therefor; but every peremptory challenge beyond that number shall be void. And in like manner the advocate for the prosecution may, without cause assigned, challenge six jurymen if one person is arraigned, and twelve if two are arraigned together, and so forth, being six without cause assigned for every person arraigned; and every further peremptory challenge shall be void.

Challenges for cause.

272. Challenges for cause shall be allowed on any of the following grounds :—

1st, presumed or actual partiality or prejudice in the juror, as standing in the relation of husband, master or servant to the person accused, or to the person supposed to have been injured or affected by the acts complained of, or to the person on whose complaint the prosecution was instituted; being in the employment of either of such persons; being plaintiff or defendant against either of such persons in civil suit, or having complained against or having been accused by either of such persons in any criminal prosecution, or entertaining prejudiced views on the case to be tried;

2nd, some personal cause, as infancy, old age, deafness, blindness, infirmity or ill-health;

3rd, that the juror has been convicted of any offence which, in the opinion of the court, renders him unfit to serve as a juror;

4th, that the juror does not understand the English language.

Trial of challenges for cause.

273. Every challenge for cause, if objected to by the opposite party, shall be tried and determined by the court without a jury, and the person challenged shall be examined on oath, and shall be required to answer on oath all lawful questions relating to the trial of the challenge.

Foreman of jury.

274. (1) When the jurors have been chosen they shall appoint one of their number to be foreman.

(2) The foreman shall preside at the meetings of the jury for consideration, and shall announce the verdict of the jury, and ask any information from the court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the court thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the court.

Swearing of jury.

275. When the foreman has been appointed, the jurors shall be sworn.

Giving the accused in charge.

276. The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of the court shall inform them of the charge set forth in the information, and of their duty as jurors upon the trial.

Absence of a juror.

277. If in the course of a trial by jury, at any time before the delivery of the verdict, any juror from any sufficient cause is prevented from attending throughout the trial or from further attendance at the time, or if any juror absent himself and it is not practicable to enforce his attendance, the court may postpone the trial until the juror can attend, if within a reasonable time; or, if the attendance of such juror cannot be procured within a reasonable time, the court may direct that a new juror shall be added and the jury re-sworn, or that the jury shall be discharged and a new jury empanelled, and in either of the latter cases the trial shall commence anew.

Illness of accused.

278. If during a trial the accused person in the opinion of the court becomes incapable, through sickness or other sufficient cause, of remaining at the bar, the court may discharge the jury and adjourn the trial.

Keeping jury together.

279. (1) It shall not be necessary in any case to keep the jury together during any adjournment prior to the close of the judge's summing up; but it shall be lawful for the court, if it shall appear to it to be advisable in the interests of justice in any trial, to require the jury to be kept together during any adjournment.

(2) When the jury have retired to consider their verdict, the court may give such directions as it may think fit with respect to their accommodation, custody and refreshment.

Jurors to attend at adjourned sittings.

280. If the trial is adjourned, the jurors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

TRIAL WITH ASSESSORS.

Selection of assessors.

281. When a trial is to be held with the aid of assessors, the court shall select three from the list of those summoned to serve as assessors at the sessions.

The absence of an assessor.

282. (1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors.

(2) If two or more of the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Assessors to attend at adjourned sittings.

283. If the trial is adjourned, the assessors shall be required to attend at the adjourned sitting, and at any subsequent sitting until the conclusion of the trial.

CASE FOR THE PROSECUTION.

Opening of case for prosecution.

284. When the jurors or assessors have been chosen, the advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

Additional witnesses for prosecution.

285. No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial, unless the accused person has received reasonable notice in writing of the intention to call such witness.

The notice must state the witness's name and address and the substance of the evidence which he intends to give. The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness s evidence and determined to call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness could give on the day on which he is called.

Cross-examination of witnesses for the prosecution.

286. The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his advocate, and to re-examination by the advocate for the prosecution.

Depositions may be read as evidence in certain cases.

287. Where any person has been committed for trial for any offence, the deposition of any person taken before the committing subordinate court may, if the conditions herein-

after set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence.

The conditions hereinbefore referred to are the following :—

(*a*) The deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 227, or of a witness who is proved at the trial by oath of a credible witness to be absent from the Colony or dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf;

(*b*) It must be proved at the trial, either by a certificate purporting to be signed by the magistrate of the subordinate court before whom the deposition purports to have been taken or by the clerk to such court, or by the oath of a credible witness, that the deposition was taken in the presence of the accused, and that the accused or his advocate had full opportunity of cross-examining the witness;

(*c*) The deposition must purport to be signed by the magistrate of the subordinate court before whom it purports to have been taken :

Provided that the provisions of this section shall not have effect in any case in which it is proved—

(i) that the deposition, or, where the proof required by paragraph (*b*) of this section is given by means of a certificate, that the certificate was not in fact signed by the magistrate by whom it purports to have been signed; or

(ii) where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that be is required to attend the trial.

Statement of accused.

288. The statement (if any) of the accused person duly recorded by or before the committing magistrate, and whether signed by him or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement did not in fact sign it.

Close of case for prosecution.

289. (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement (if any) of the accused person has been given in evidence, the accused person shall be asked whether he means to give or adduce evidence.

(2) If he says that he does not, the advocate for the prosecution may sum up the case against the accused person; and if the court considers that there is no evidence that the accused person committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(3) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is no evidence that the accused committed the offence, the court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(4) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is evidence that he committed the offence, the court shall call on the accused person to enter on his defence.

The defence.

CASE FOR THE DEFENCE.

290. The accused person or his advocate may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

Additional witnesses for the defence.

291. The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, but he shall not be entitled as of right to have any witness summoned other

than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned.

Prosecutor's reply.

292. If the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution shall be entitled to reply.

Where accused adduces no evidence.

293. If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence, the advocate for the prosecution shall then sum up the case against the accused person and the court shall then call on the accused person personally or by his advocate to address the court on his own behalf.

CLOSE OF HEARING.

In Trials by Jury.

Summing up by judge.

294. When, in a trial before a jury, the case on both sides is closed, the judge shall, if necessary, sum up the law and evidence in the case.

Duty of judge.

295. (1) In such cases it is the duty of the judge—

(*a*) to decide all questions of law arising in the course of a trial, and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and, in his discretion, to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceedings.

Duty of jury.

296. It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which, under such view, ought, according to the direction of the judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which, according to law, are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the judge to decide their meaning.

Jury to consider their verdict.

297. After the summing up, the jury shall consider their verdict, and for that purpose may retire.

Except with the leave of the court, no person other than a juror shall speak to or hold any communication with any member of the jury while the jury are considering their verdict.

Delivery of verdict.

298. When the jury have considered their verdict, the foreman shall inform the judge what is their verdict, or that they are not unanimous.

Procedure where jury differ.

299. If the jury are not unanimous, the judge may require them to retire for further consideration. After such period as the judge considers reasonable, the jury may deliver their verdict, or state that they are not unanimous.

Verdict on each charge.

300. (1) Unless otherwise ordered by the court, the jury shall return a verdict on all the charges on which the accused is tried, and the judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Such questions and the answers to them shall be recorded.

Amending a verdict.

301. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Action on verdict.

302. (1) (*a*) When the jury are unanimous in their opinion, the judge shall give judgment in accordance with that opinion.

(*b*) If the accused person is found not guilty, the judge shall record a judgment of acquittal. If the accused person is found guilty, the judge shall pass sentence on him according to law.

(2) If the jury are not unanimous in their opinion, the judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Retrial of accused after discharge of jury.

303. Whenever the jury is discharged, the accused person shall be detained in custody or released on bail, as the case may be, and shall be tried by another jury, unless the judge considers that he should not be retried, in which case the judge shall make an entry to that effect on the information, and such entry shall operate as an acquittal.

In Cases tried with Assessors.

Delivery of opinions by assessors.

304. (1) When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused person is convicted, the judge shall pass sentence on him according to law.

PASSING SENTENCE.

Calling upon the accused.

305. If the jury find the accused person guilty, or if the judge convicts him, or if the accused person pleads guilty, it shall be the duty of the registrar to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

Motion in arrest of judgment.

306. (1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused he shall be discharged from that information.

Sentence.

307. If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the session.

Power to reserve decision on question raised at trial.

308. The court before which any person is tried for an offence may reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of trial.

Power to reserve questions arising in the course of the trial.

309. (1) When any person has, in a trial before the Supreme Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the Supreme Court any question which has arisen in the course of the trial, and the determination of which would affect the event of the trial.

(2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison or, if the judge thinks fit, be admitted to bail; and the Supreme Court shall have power to review the case, or such part thereof as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the trial judge and to pass such judgment or order as the Supreme Court may think fit.

Objections cured by verdict.

310. No judgment shall be stayed or reversed on the ground of any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor because of any error committed in summoning or swearing

the jury or any of them; nor because any person who has served upon the jury was not qualified to sit as a juror, nor because of any objection which might have been stated as a ground of challenge of any of the jurors, nor for any informality in swearing the witnesses or any of them.

Evidence for arriving at a proper sentence.

311. The court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

PART X.—SENTENCES AND THEIR EXECUTION.

Sentence of Death.

Sentence of death.

312. When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.

Accused to be informed of right to appeal.

313. When an accused person is sentenced to death, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Authority for detention.

314. A certificate under the hand of the registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.

Record and Report to be sent to Governor.

315. (1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is confirmed, then as soon as conveniently may be after such confirmation, the presiding judge shall forward to the Governor a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(2) The Governor after considering the said report in Executive Council shall communicate to the said judge, or his successor in office, the terms of any decision to which he may come thereon, and such judge shall cause the tenor and substance thereof to be entered in the records of the court.

(3) The Governor shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the public seal of the Colony to give effect to the said decision. If the sentence of death is to be carried

out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial or cremation of the body of the person executed. If the sentence is commuted for any other punishment, the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject:

Provided that the Governor's order may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the order.

(4) The warrant, or order, or pardon of the Governor shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

Sentence of death on pregnant woman.

316. If a woman sentenced to death be alleged to be pregnant, the court shall inquire into the fact and, if there is a reasonable cause for believing it, shall order the sentence to be postponed until the result of the pregnancy be known and shall report such order to the Governor.

OTHER SENTENCES.

Warrant in case of sentence of imprisonment

317. A warrant under the hand of the judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Colony, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death. Every sentence shall be deemed to commence from, and to include, the whole of the day of the date on which it was pronounced.

Warrant for levy of fine, etc.

318. (1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same by distress and sale under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property was found.

Suspension of execution of sentence of imprisonment in default of fine.

319. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the court issues a warrant under the last preceding section, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a date not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

Payment by instalments.

(3) The court may in its discretion direct that any money to which this section applies may be paid by instalments at such times and in such amounts as the court may deem fit; but so nevertheless that in default of payment of any such instalment as aforesaid the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly.

Commitment for want of distress.

320. If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Commitment in lieu of distress.

321. When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Payment in full after commitment.

322. Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

Part payment after commitment.

323. (1) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the preceding sub-section shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

Who may issue warrant.

324. Every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office.

Limitation of imprisonment.

325. No commitment for non-payment shall be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period.

FIRST OFFENDERS.

Power to release upon probation instead of sentencing to punishment.

326. (1) In any case in which a person is convicted before any court of any offence punishable with not more than three years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year) as the court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour.

(2) An order under this section may be made by the Supreme Court when exercising its powers of revision.

Provisions in case of offender failing to observe conditions of his recognizance.

327. (1) If at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may, after hearing the case, pass sentence.

Condition as to abode of offender.

328. The court, before directing the release of an offender under section 326, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for the observance of the condition.

PREVIOUSLY CONVICTED OFFENDERS.

Person twice convicted may be subjected to police supervision.

329. (1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or upwards, is again convicted of any offence punishable with imprisonment for a term of three years or upwards, the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the Supreme Court when exercising its powers of revision.

Requirements from persons subject to police supervision.

330. (1) Every person subject to police supervision, and who is at large in the Colony, shall—

(*a*) report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may be prescribed by rules under this section; and

(*b*) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section.

(2) The Governor in Council may make rules for carrying out the provisions of this section.

Failure to comply with requirements under section 330.

331. If any person subject to police supervision who is at large in the Colony refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months.

DEFECTS IN ORDER OR WARRANT.

Errors and omissions in orders and warrants

332. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no defect in form in any order or warrant given under this Code, shall be held to render void or unlawful any act done or intended to be done

by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.

PART XI.—APPEALS.

APPEALS FROM SUBORDINATE COURTS.

Appeals.

Appeal to Supreme Court.

333. (1) Save as hereinafter provided, any person convicted on a trial held by any subordinate court may appeal to the Supreme Court, and shall be so informed by the magistrate at the time when sentence is passed.

(2) An appeal to the Supreme Court may be on a matter of fact as well as on a matter of law.

No appeal on plea of guilty nor in petty cases.

334. (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court, except as to the extent or legality of the sentence.

(2) No appeal shall be allowed in cases in which a subordinate court has passed a sentence of imprisonment not exceeding one month only, or of a fine not exceeding five pounds only, or of corporal punishment only:

Provided that there shall be no appeal from a sentence of imprisonment passed by such court in default of the payment of a fine, when no substantive sentence of imprisonment has also been passed:

Provided, however, that an appeal may be brought against any sentence referred to in this sub-section by which any two or more of the punishments therein mentioned are combined, but no sentence, which would not otherwise be liable to appeal, shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Limitation.

335. Every appeal shall be entered within thirty days of the date of the order or sentence appealed against.

Petition of appeal.

336. Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every such petition shall (unless the Supreme Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Appellant in prison.

337. If the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the registrar of the Supreme Court.

Summary dismissal of appeal.

338. (1) On receiving the petition and copy under section 336 the Supreme Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Provided that no appeal shall be dismissed unless the appellant (if not in custody) or his advocate has had a reasonable opportunity of being heard in support of the same, and provided further that no appeal, where the appellant is in custody, shall be dismissed unless the appellant's advocate (if the court has been notified that he has an advocate) has had such opportunity.

(2) Before dismissing an appeal under this section, the court may call for the record of the case, but shall not be bound to do so.

Notice of time and place of hearing.

339. If the Supreme Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Attorney General, of the time and place at which such appeal will be heard, and shall furnish the Attorney General with a copy of the proceedings and of the grounds of appeal.

Powers of Supreme Court.

340. (1) The Supreme Court shall then send for the record of the case, if such record is not already in court. After perusing such record and hearing the appellant or his advocate, if he appears, and the Attorney General, if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from a conviction—

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction, or commit him for trial; or

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or

(iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;

(*b*) in an appeal from any other order, alter or reverse such order,

and in either case may make any amendment or any consequential or incidental order that may appear just and proper.

(2) An appellant who is in custody shall be entitled to be present at the hearing of an appeal unless his appeal is being conducted by an advocate:

Provided that the court may, in any case in which it considers it to be in the interest of the appellant that he be present, direct his attendance.

Order of the Supreme Court to be certified to lower court.

341. (1) When a case is decided on appeal by the Supreme Court, it shall certify its judgment or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court, and, if necessary, the records shall be amended in accordance therewith.

Suspension of sentence pending appeal.

342. (1) Pending any appeal by a convicted person, the Supreme Court may, for reasons to be recorded by it in writing, order that the execution of a sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or on his own bond.

(2) When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced.

Further evidence

343. (1) In dealing with an appeal from a subordinate court the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the Supreme Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

Number of judges on an appeal.

344. All appeals to the Supreme Court shall be heard by not less than two judges: Provided that any interlocutory matter may be heard and disposed of by one judge.

If on the hearing of an appeal the court is equally divided in opinion, the appeal shall be dismissed.

Abatement of appeals.

345. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Appeals to Court of Appeal for Eastern Africa.

346. Any person aggrieved by a decision of the Supreme Court in its appellate jurisdiction under this Part may appeal to the Court of Appeal for Eastern Africa on a matter of law (not including severity of sentence) but not on a matter of fact.

Every such appeal shall be entered within thirty days of the date of the order appealed against and the provisions of sections 336 to 345 inclusive shall apply *mutatis mutandis* to appeals from the Supreme Court to the Court of Appeal for Eastern Africa.

Revision.

Power of Supreme Court to call for records.

347. The Supreme Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Power of magistrates to call for records of inferior courts and to report to the Supreme Court.

348. (1) Any magistrate may call for and examine the record of any criminal proceedings before a subordinate court of a class inferior to the court which he is empowered to hold, and situate within the local limits of his jurisdiction, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court.

(2) If any magistrate acting under sub-section (1) considers that any finding, sentence or order of such inferior subordinate court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the Supreme Court.

Powers of Supreme Court on revision.

349. (1) In the case of any proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may—

(*a*) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 340, 342 and 343 and may enhance the sentence;

(*b*) in the case of any other order other than an order of acquittal, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by a magistrate empowered to hold a subordinate court of the first class.

(4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

Discretion of court as to hearing parties.

350. No party has any right to be heard either personally or by advocate before the Supreme Court when exercising its powers of revision:

Provided that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall be deemed to affect sub-section (2) of the last preceding section.

Number of judges in revision.

351. All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge :

Provided that when such court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

Supreme Court order to be certified to lower court.

352. When a case is revised by the Supreme Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

Case Stated.

Case stated by subordinate court.

353. After the hearing and determination by any subordinate court of any summons, charge, information or complaint, either party to the proceedings before the said subordinate court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within thirty days after the said determination to the said subordinate court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party, hereinafter called the appellant, shall within fourteen days after receiving such case transmit the same to the Supreme Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in which the determination was given, hereinafter called the respondent.

Recognizance to be taken and fees paid.

354. The appellant, at the time of making such application and before the case shall be stated and delivered to him by the subordinate court, shall in every instance enter into a recognizance before such subordinate court, with or without surety or sureties, and in such sum not exceeding fifty pounds as to the subordinate court shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court, and to pay such costs as may be awarded by the same; and before he shall be entitled to have the case delivered to him, he shall pay to the clerk of such subordinate court his fees for and in respect of

the case and recognizances, and any other prescribed fees to which such clerk shall be entitled, which fees shall be in accordance with the Third Schedule, and which shall be paid in stamps to be affixed to the original case stated, recognizance or certificate of refusal, as the case may be, and shall be cancelled by the subordinate court.

The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same subordinate court, or, if that is impracticable, before some other subordinate court exercising the same jurisdiction, within fourteen days after the judgment of the Supreme Court shall have been given, to abide such judgment unless the determination appealed against be reversed :

Provided that nothing in this section shall apply to an application for a case stated by or under the direction of the Attorney General.

Subordinate court may refuse case when it thinks application frivolous.

355. If the subordinate court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal : Provided that the subordinate court shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney General, who may require a case to be stated with reference to proceedings to which he was not a party.

Procedure on refusal of subordinate court to state case.

356. When a subordinate court has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court within two months of such refusal, upon an affidavit of the facts, for a rule calling upon such subordinate court and also upon the respondent to show cause why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the subordinate court, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Supreme Court to determine the questions on the case; its decision to be final.

357. The Supreme Court shall (subject to the provisions of the next succeeding section) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the subordinate court with the opinion of the Supreme

Court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties : Provided always that no magistrate who shall state and deliver a case in pursuance of this Part or *bonâ fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal, and provided further that no costs shall be awarded against the Crown except where the Crown is the appellant.

Case may be sent back for amendment or rehearing.

358. The Supreme Court shall have power, if it thinks fit—

(*a*) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;

(*b*) to remit the case to the subordinate court for rehearing and determination with such directions as it may deem necessary.

Powers of subordinate court after decision of Supreme Court.

359. After the decision of the Supreme Court has been given on a case stated, the subordinate court in relation to whose determination the case has been stated, or any other subordinate court exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as the subordinate court which originally decided the case would have had to enforce its determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the magistrate holding such subordinate court for enforcing such conviction or order, by reason of any defect in the same respectively.

Appellant may not proceed both by case stated and by appeal.

360. No person who has appealed under section 333 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 333.

Contents of case stated.

361. A case stated by a subordinate court shall set out—

(*a*) the charge, summons, information or complaint;

(*b*) the facts found by the subordinate court to be admitted or proved;

(*c*) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(*d*) any submission of law made by or on behalf of the accused during the trial or inquiry;

(*e*) the finding and, in the case of conviction, the sentence of the subordinate court;

(*f*) any question or questions of law which the subordinate court or any of the parties may desire to be submitted for the opinion of the Supreme Court;

(*g*) any question of law which the Attorney General may require to be submitted for the opinion of the Supreme Court.

Constitution of court hearing case stated.

362. A case stated for the opinion of the Supreme Court shall be heard by not less than two judges. If on the hearing of a case stated the court is equally divided in opinion the case stated shall be reheard before three judges.

Supreme Court may enlarge time.

363. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 353, 354 or 356.

APPEALS FROM SUPREME COURT.

Appeals from Supreme Court to His Majesty's Court of Appeal for Eastern Africa.

364. Any person convicted on a trial held by the Supreme Court may appeal to His Majesty's Court of Appeal for Eastern Africa—

(*a*) Against his conviction on any ground of appeal which involves a question of law alone; and

(*b*) with the leave of such Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the court to be a sufficient ground of appeal; and

(*c*) with the leave of such Court of Appeal against the sentence passed on conviction unless such sentence is one fixed by law.

PART XII.—SUPPLEMENTARY PROVISIONS.

IRREGULAR PROCEEDINGS.

Proceedings in wrong place.

365. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of which it was arrived at

or passed, took place in a wrong province, district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Trial by jury of offence triable with assessors.

366. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

367. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account—

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code; or

(*b*) of the omission to revise any list of jurors or assessors in accordance with section 252; or

(*c*) of any misdirection in any charge to a jury,

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

368. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

INQUIRIES AS TO SUDDEN DEATHS.

Magistrates empowered to hold inquests.

369. Any magistrate empowered to hold a subordinate court of the first, second or third class, and any magistrate specially empowered in that behalf by the Governor, shall be empowered to hold inquests.

Police to inquire and report on suicide, etc.

370. (1) The officer in charge of a police station, or any other officer specially empowered by the Governor in that behalf, on receiving information that a person—

(*a*) has committed suicide; or

(*b*) has been killed by another or by an accident; or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Governor, shall proceed to the place where the body of such deceased person is, and shall there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The report shall be forwarded forthwith to the nearest magistrate empowered to hold inquests.

(2) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule prescribed by the Governor, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed by the Governor in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Inquiry by magistrate into cause of death

371. (1) When any person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of the last preceding section any magistrate so empowered may, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) Whenever such magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.

(3) If before or at the termination of the inquiry the magistrate is of opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, as the case may be, or take such other steps as may be necessary to secure his or their attendance to answer the charge. On the attendance of the said person or persons the magistrate shall commence the inquiry *de novo* and shall proceed as if he had taken cognizance of an offence.

(4) If at the termination of the inquiry the magistrate is of opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Commissioner of Police.

(5) If at the termination of the inquiry the magistrate is of opinion that no offence has been committed, he shall record his opinion accordingly.

DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND WRITS.

Power to issue directions of the nature of a *habeas corpus*

372. (1) The Supreme Court may whenever it thinks fit direct—

(*a*) that any person within the limits of the Colony be brought up before the court to be dealt with according to law;

(*b*) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(*d*) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor for trial to be examined touching any matter pending before such court-martial or commissioners respectively;

(*e*) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment

(2) The Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

Power of the Supreme Court to issue writs.

373. (1) The Supreme Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Judicature in England.

(2) The Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

MISCELLANEOUS.

Persons before whom affidavits may be sworn.

374. Affidavits and affirmations to be used before the Supreme Court may be sworn and affirmed before a judge of the Supreme Court or any magistrate or the registrar or deputy registrar of the Supreme Court or any justice of the peace or commissioner for oaths.

Shorthand notes of proceedings.

375. Shorthand notes may be taken of the proceedings at the trial of any person before the Supreme Court, and a transcript of such notes shall be made if the court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial.

Copies of proceedings.

376. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith provided he pays for the same, unless the court for some special reason thinks fit to furnish it free of cost.

Forms.

377. Such forms as the Supreme Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Expenses of jurors, assessors, witnesses, etc.

378. Subject to any rules which may be made by the Governor in Council, any court may order payment on the part of Government of the reasonable expenses of any juror, assessor, complainant or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Code.

REPEAL.

Repeal and saving clause. No. 7 of 1926. No. 14 of 1926. No. 31 of 1926.

379. (1) The Criminal Procedure Ordinance (Chapter 7 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, and the Costs in Criminal Cases Ordinance, 1926, and the Criminal Procedure (Amendment) Ordinance, 1926, are hereby repealed :

Provided that such repeal shall not affect—

(*a*) the past operation of the said repealed Ordinances or any of them ;

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinances or any of them ;

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed under the said repealed Ordinances or any of them ;

(*d*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, but any such investigation, legal proceeding or remedy may be carried on or sought as if the said Ordinances had not been repealed :

Provided further that all rules, orders, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications and proclamations published under any of the said repealed Ordinances shall, so far as they are consistent with the provisions of this Code, be deemed to have been respectively made, given, approved, conferred and published under this Code.

(2) Whenever reference is made in any enactment now in force or in any document to any provision in any of the said repealed Ordinances for which other provision is made by this Code, such reference shall be construed as a reference to the other provision made by this Code if such reference is consistent with the context in which it occurs.

FIRST SCHEDULE.

OFFENCES UNDER THE PENAL CODE.

EXPLANATORY NOTE.—The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

CHAPTER V.—PARTIES TO OFFENCES.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
21	Aiding, abetting, counselling or procuring the commission of an offence.	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise.	Same punishment as for the offence aided, abetted, counselled or procured.	Any court by which the offence aided, abetted, counselled or procured would be triable.

DIVISION I.

OFFENCES AGAINST PUBLIC ORDER.

CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY.

36	Treason.	May arrest without warrant.	Death.	
37	Instigating foreign invasion.	ditto	ditto	
38	Misprision of treason.	ditto	Imprisonment for life	
39	Treasonable felony.	ditto	ditto	
40	Promoting native war.	ditto	ditto	
42	Inciting to mutiny.	ditto	ditto	
43	Aiding in acts of mutiny.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
44	Inducing desertion.	ditto	Imprisonment for six months.	Any magistrate.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY—*continued.*

1	2	3	4	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
45 (1)	Aiding prisoner of war to escape.	May arrest without warrant.	Imprisonment for life.	
(2)	Permitting prisoner of war to escape.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
47	Seditious conspiracy libel and publication.	May arrest without warrant.	ditto	ditto
47	Seditious conspiracy, libel and publication (after previous conviction).	ditto	Imprisonment for seven years.	Subordinate court of the first class.
48	Possessing seditious publications.	ditto	Imprisonment for one year.	Subordinate court of the first or second class.
56	Administering or taking oath to commit capital offence.	ditto	Imprisonment for life.	
57	Administering or taking other unlawful oaths.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
59 (1)	Unlawful drilling.	ditto	ditto	ditto
(2)	Being unlawfully drilled.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

CHAPTER VIII.—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY.

60	Publishing false reports.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
61	Defamation of foreign princes.	ditto	ditto	ditto
62	Foreign enlistment.	ditto	ditto	ditto
63	Piracy.	May arrest without warrant.	Punishment prescribed by law of England.	

*For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER IX.—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court by which offence is triable when the accused is a non-native.*
65	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years	Subordinate court of the first class.
66	Being member of unlawful society.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
72	Unlawful assembly.	ditto	Imprisonment for one year without hard labour.	ditto
73	Riot.	ditto	Imprisonment for two years.	ditto
76	Rioting after proclamation.	ditto	Imprisonment for five years.	Subordinate court of the first class.
77	Obstructing proclamation.	ditto	Imprisonment for ten or five years.	ditto
78	Rioters destroying buildings.	ditto	Imprisonment for life.	
79	Rioters injuring buildings.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
80	Riotously interfering with railway, vehicle or vessel	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
81	Going armed in public.	ditto	ditto	ditto
82	Forcible entry.	ditto	ditto	ditto
83	Forcible detainer.	ditto	ditto	ditto
84	Committing affray.	ditto	Imprisonment for one year.	Any magistrate.
85	Challenging to fight a duel.	Shall not arrest without warrant	Imprisonment for two years.	ditto
86	Threatening violence.	May arrest without warrant.	Imprisonment for one year.	ditto
	If the offence committed in the night.	ditto	Imprisonment for two years.	ditto
87	Assembling for purpose of smuggling.	ditto	Fine of one hundred pounds or imprisonment for six months	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*.

DIVISION II.

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY.

CHAPTER X.—CORRUPTION AND ABUSE OF OFFICE.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
88	Official corruption.	Shall not arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.
89	Extortion by public officers.	ditto	ditto	ditto
90	Receiving property to show favour.	Shall not arrest without warrant	Imprisonment for six months.	Subordinate court of the first or second class.
91	Officer discharging duties in respect of property in which he has a special interest.	ditto	Imprisonment for one year.	ditto
92	False claims by officials.	ditto	Imprisonment for two years.	ditto
93	Abuse of office.	ditto	ditto	ditto
93	Abuse of office. (if for purposes of gain).	ditto	Imprisonment for three years.	ditto
94	False certificates by public officers.	ditto	Imprisonment for two years.	ditto
95	False assumption of authority.	ditto	ditto	ditto
96	Personating public officers.	May arrest without warrant	Imprisonment for three years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XI.—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
98	Perjury or subornation of perjury.	Shall not arrest without warrant	Imprisonment for seven years.	Subordinate court of the first class.
100	Fabricating evidence	ditto	ditto	ditto
101	False swearing.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
102	Deceiving witnesses.	ditto	ditto	ditto
103	Destroying evidence.	ditto	ditto	ditto
104	Conspiracy to defeat justice and interference with witnesses.	ditto	ditto	ditto
105	Compounding felonies.	ditto	ditto	ditto
106	Compounding penal actions.	ditto	ditto	ditto
107	Advertising for stolen property.	ditto	ditto	ditto
108	Contempt of court.	May arrest without warrant	Imprisonment for three months	Any Magistrate.

CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW.

109	Rescue.			
(*a*)	if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;	May arrest without warrant.	Imprisonment for life.	
(*b*)	if person rescued is imprisoned on a charge or under sentence for any other offence;	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW.—*(contd.)*.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
(*c*)	in any other case.	May arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
110	Escape.			
(*a*)	if person escaping is charged with or has been convicted of felony;	ditto	Imprisonment for seven years, with or without corporal punishment.	Subordinate court of the first class.
(*b*)	in any other case.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
111	Aiding prisoners to escape.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
112	Removal, etc., of property under lawful seizure.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
113	Obstructing court officers.	ditto	Imprisonment for one year.	ditto

CHAPTER XIII.—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY.

114	Frauds and breaches of trust by public officers.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first class.
115	Neglect of official duty.	ditto	ditto	ditto
116	Disobedience of statutory duty.	ditto	ditto	ditto
117	Disobedience of lawful orders.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* ection 10.

DIVISION III.

OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL.

CHAPTER XIV.—OFFENCES RELATING TO RELIGION.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment *Vide* also section 34 of the Penal Code.)	4 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
118	Insult to religion of any class.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
119	Disturbing religious assemblies.	ditto	ditto	ditto
120	Trespassing on burial places.	ditto	ditto	ditto
121	Uttering words with intent to wound religious feelings.	Shall not arrest without warrant	Imprisonment for one year.	ditto

CHAPTER XV.—OFFENCES AGAINST MORALITY.

123	Rape.	May arrest without warrant	Death or imprisonment for life or for any term not less than three years, with or without corporal punishment.	
124	Attempted rape.	ditto	Imprisonment for life, with or without corporal punishment.	
125	Abduction.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
126	Abduction of girl under sixteen.	ditto	Imprisonment for two years.	ditto
127(1)	Indecent assault on females.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	ditto
(3)	Indecently insulting or annoying females	ditto	Imprisonment for one year.	ditto

For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XV.—OFFENCES AGAINST MORALITY—*(contd.)*

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
128(1)	Defilement of girl under sixteen.	May arrest without warrant	Imprisonment for life, with or without corporal punishment.	
(2)	Attempted defilement of girl under sixteen.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	Subordinate court of the first class.
129	Defilement of an idiot or imbecile.	ditto	ditto	ditto
130	Procuration.	ditto	Imprisonment for two years, with or without corporal punishment.	ditto
131	Procuring defilement by threats or fraud or administering drugs.	ditto	Imprisonment for two years.	ditto
132	Householder permitting defilement of girl under thirteen on his premises.	ditto	Imprisonment for five years.	ditto
133	Householder permitting defilement of girl under sixteen on his premises.	ditto	Imprisonment for two years.	ditto
134	Detention with intent or in brothel.	ditto	ditto	ditto
136	Male person living on earnings of prostitution or persistently soliciting.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XV.—OFFENCES AGAINST MORALITY—(*contd.*).

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
137	Woman living on earnings of prostitution or aiding, etc., for gain, prostitution of another woman.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class.
139	Keeping a brothel.	ditto	ditto	ditto
140	Conspiracy to defile.	ditto	Imprisonment for three years, with or without corporal punishment.	ditto
141	Attempt to procure abortion.	ditto	Imprisonment for fourteen years.	ditto
142	Woman attempting to procure her own abortion.	ditto	Imprisonment for seven years.	ditto
143	Supplying drugs or instruments to procure abortion.	ditto	Imprisonment for three years.	ditto
145	Unnatural offences.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	
146	Attempt to commit unnatural offence.	ditto	Imprisonment for seven years, with or without corporal punishment.	
147(1)	White woman having connection with native.	ditto	Imprisonment for five years.	
(2)	White woman soliciting native to have connection with her.	ditto	Imprisonment for two years.	

* For the court by which an offence is triable when the accused is a native. *vide* section 10.

CHAPTER XV.—OFFENCES AGAINST MORALITY—*(contd.)*

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
(3)	Native having or attempting to have connection with white woman.	May arrest without warrant	Imprisonment for five years.	
(4)	Procuring or attempting to procure white woman for purpose of having connection with native.	ditto	Imprisonment for ten years, with or without corporal punishment.	
(5)	Householder permitting connection between native and white woman.	ditto	Imprisonment for five years.	
148(1)	Incest by males.	ditto	Imprisonment for five years.	
(2)	If female person is under the age of thirteen years.	ditto	Imprisonment for life.	
(3)	Attempt to commit incest.	ditto	Imprisonment for two years.	
149	Incest by females.	ditto	Imprisonment for five years.	

CHAPTER XVI.—OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS.

153	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.	
154	Bigamy.	ditto	Imprisonment for five years.	
155	Dishonestly or fraudulently going through ceremony of marriage.	ditto	ditto	
156	Desertion of children.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
157	Neglecting to provide food, etc., for children.	ditto	ditto	ditto
158	Master not providing for servants or apprentices.	ditto	ditto	ditto
159	Child stealing.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XVII.—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
160	Committing common nuisance.	Shall not arrest without warrant	Imprisonment for one year.	Any magistrate.
161(3)	Keeping common gaming house.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
(4)	Being found in common gaming house.	ditto	Fine of five pounds for first offence, and for each subsequent offence a fine of twenty pounds or imprisonment for three months or both.	ditto
162	Keeping or permitting the keeping of a common betting house.	ditto	Imprisonment for one year.	ditto
163(1)	Carrying on a lottery	ditto	Imprisonment for two years.	ditto
(2)	Printing or publishing advertisement relating to a lottery.	ditto	Fine of fifty pounds.	ditto
165	Trafficking in obscene publications.	May arrest without warrant.	Imprisonment for two years.	ditto
166	Being an idle or disorderly person.	ditto	Imprisonment for one month or a fine of two pounds, or both.	Any magistrate.
167	Being a rogue or vagabond.	May arrest without warrant.	Imprisonment for three months for first offence, and for each subsequent offence imprisonment for one year with or without corporal punishment.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued*.

CHAPTER XVII.—NUISANCES—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
168(1)	Wearing uni orm without authority.	May arrest with-ou warrant.	Imprisonment for one month or a fine of ten pounds.	Subordinate court of the first or second.
(2)	Bringing contempt on uniform.	ditto	Imprisonment for three months or a fine of twenty pounds.	dtito
(3)	Importing or selling uniform without authority.	ditto	Imprisonment for six months or a fine of one hundred pounds.	ditto
169	Doing any act likely to spread infection of dangerous disease.	ditto	Imprisonment for two years.	ditto
170	Adulteration of food or drink intended for sale.	Shall not arrest without warrant	ditto	ditto
171	Selling, or offering or exposing for sale, noxious food or drink.	ditto	ditto	ditto
172	Adulteration of drugs intended for sale.	ditto	ditto	ditto
173	Selling adulterated drugs.	ditto	ditto	ditto
174	Fouling water of public spring or reservoir.	May arrest without warrant.	ditto	Any magistrate.
175	Making the atmosphere noxious to health.	Shall not arrest without warrant	ditto	ditto
176	Carrying on offensive trade.	ditto	Imprisonment for one year.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER XVIII.—DEFAMATION.

1	2	3	4	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
177	Libel.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first class

DIVISION IV.

OFFENCES AGAINST THE PERSON.

CHAPTER XIX.—MURDER AND MANSLAUGHTER.

187	Murder.	May arrest without warrant.	Death.	
188	Manslaughter.	ditto	mprisonment for life.	

CHAPTER XXI.—OFFENCES CONNECTED WITH MURDER AND SUICIDE.

201	Attempted murder.	May arrest without warrant.	Imprisonment for life.	
202	Attempted murder by convict.	ditto	Imprisonment for life, with or without corporal punishment.	
203	Being accessory after the fact to murder.	ditto	Imprisonment for seven years.	
204	Sending written threat to murder.	ditto	ditto	
205	Conspiracy to murder.	ditto	Imprisonment for fourteen years.	
206	Aiding suicide.	ditto	Imprisonment for life.	
207	Attempted suicide.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
208	Concealing the birth of a child.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXII.—OFFENCES ENDANGERING LIFE OR HEALTH.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
209	Disabling in order to commit felony or misdemeanour.	May arrest without warrant.	Imprisonment for life, with or without corporal punishment.	
210	Stupefying in order to commit felony or misdemeanour.	ditto	Imprisonment for life.	
211	Acts intended to cause grievous harm or prevent arrest.	ditto	ditto	
212	Preventing escape from wreck.	ditto	ditto	
213	Intentionally endangering safety of persons travelling by railway.	ditto	Imprisonment for life, with or without corporal punishment.	
214	Doing grievous harm	ditto	Imprisonment for seven years.	Subordinate court of the first or second class
215	Attempting to injure by explosive substances.	May arrest without warrant.	Imprisonment for fourteen years.	
216	Administering poison with intent to harm.	ditto	ditto	
217	Wounding and similar acts.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
218	Failing to provide necessaries of life.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued*.

CHAPTER XXIII.—CRIMINAL RECKLESSNESS AND NEGLIGENCE.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
222	Rash and negligent acts.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
223	Other negligent acts causing harm.	ditto	Imprisonment for six months.	ditto
224	Endangering safety of persons travelling by railway.	ditto	Imprisonment for two years.	ditto
225	Exhibiting false light, mark or buoy.	ditto	Imprisonment for seven years.	
226	Conveying person by water for hire in unsafe or overloaded vessel.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
227	Causing danger or obstruction in public way or line of navigation.	Shall not arrest without warrant.	Fine.	ditto

CHAPTER XXIV.—ASSAULTS.

228	Common assault.	Shall not arrest without warrant	Imprisonment for one year.	Any magistrate
229	Assault occasioning actual bodily harm.	May arrest without warrant.	Imprisonment for five years.	Subordinate court of the first or second class.
230	Assaulting person protecting wreck.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
231	Various assaults.	ditto	Imprisonment for Five years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXV.—OFFENCES AGAINST LIBERTY.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to th Supreme Court) by which offence is triable whent e accused is a non-native*
235	Kidnapping.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
236	Kidnapping or abducting in order to murder.	ditto	Imprisonment for ten years.	
237	Kidnapping or abducting with intent to confine a person.	ditto	Imprisonment for seven years.	Subordinate court of the first class
238	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.	May arrest without warrant.	Imprisonment for ten years.	
239	Wrongfully concealing or keeping in confinement a kidnapped or abducted person.	ditto	Same punishment as for kidnapping or abduction.	
240	Kidnapping or abducting child under fourteen with intent to steal from its person.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
241	Buying or disposing of any person as a slave.	ditto	ditto	
242	Habitually dealing in slaves.	ditto	Imprisonment for ten years.	
243	Unlawful compulsory labour.	ditto	Imprisonment for two years.	Any magistrate.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

DIVISION V.

OFFENCES RELATING TO PROPERTY.

CHAPTER XXVI.—THEFT.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
252	Theft.	May arrest without warrant.	Imprisonment for five years.	Any magistrate.
253	Stealing wills.	ditto	Imprisonment for ten years.	Subordinate court of the first or second class.
254	Stealing postal matter, etc.	ditto	ditto	ditto
255	Stealing cattle, etc.	ditto	Imprisonment for seven years.	ditto
256	Stealing from the person, in a dwelling-house, in transit, etc.	ditto	ditto	ditto
257	Stealing by persons in the public service	ditto	ditto	ditto
258	Stealing by clerks and servants.	ditto	ditto	ditto
259	Stealing by directors or officers of companies.	ditto	ditto	ditto
260	Stealing by agents, etc.	ditto	ditto	ditto
261	Stealing by tenants or lodgers.	ditto	ditto	ditto
262	Stealing after previous conviction.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXVII.—OFFENCES ALLIED TO STEALING.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
263	Concealing registers.	May arrest without warrant.	Imprisonment for ten years.	
264	Concealing wills.	ditto	ditto	
265	Concealing deeds.	ditto	Imprisonment for three years.	
266	Killing animals with intent to steal.	ditto	Same punishment as if the animal had been stolen.	Any court by which the theft of the animal would be triable.
267	Severing with intent to steal.	ditto	Same punishment as if the thing had been stolen.	Any court by which the theft of the thing would be triable.
268	Fraudulently dealing with ore or minerals in mines.	ditto	Imprisonment for five years.	Subordinate court of the first or second class.
269	Fraudulent appropriation of mechanical or electrical power.	ditto	ditto	ditto
270	Unlawfully using vehicle, animal, etc.	ditto	Imprisonment for two years and/or five of fifty pounds.	ditto

CHAPTER XXVIII.—ROBBERY AND EXTORTION.

272	Robbery.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
	Robbery with violence.	ditto	Imprisonment for life, with or without corporal punishment.	

*For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXVIII.—ROBBERY AND EXTORTION—(*contd.*).

1	2	3	4	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
273	Attempted robbery.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
	Attempted robbery with violence.	ditto	Imprisonment for life, with or without corporal punishment.	
274	Assault with intent to steal.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
275	Demanding property by written threats.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
276	Threatening with intent to extort—			
	in certain specified cases;	ditto	ditto	ditto
	in any other case.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
277	Procuring execution of deeds, etc., by threats.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
278	Demanding property with menaces with intent to steal.	ditto	Imprisonment for five years.	Subordinate court of the first or second class.

CHAPTER XXIX.—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES.

280	Housebreaking.	May arrest without warrant.	Imprisonment for seven years	Subordinate court of the first or second class.
	Burglary.	ditto	Imprisonment for ten years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXIX.—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
281	Entering dwelling-house with intent to commit felony.	May arrest without warrant.	Imprisonment for five years.	Subordinate court of the first or second class.
	If offence is committed in the night.	ditto	Imprisonment for seven years.	ditto
282	Breaking into building and committing felony.	ditto	ditto	ditto
283	Breaking into building with intent to commit felony.	ditto	Imprisonment for five years.	ditto
284	Being found armed, etc., with intent to commit felony.	ditto	Imprisonment for three years.	ditto
	If offender has been previously convicted of a felony relating to property.	ditto	Imprisonment for seven years.	ditto
	CHAPTER XXX.—FALSE PRETENCES.			
287	Obtaining property by false pretence.	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first or second class.
288	Obtaining execution of a security by false pretence.	ditto	ditto	ditto
289	Cheating.	ditto	ditto	ditto
290	Obtaining credit, etc., by false pretence.	ditto	Imprisonment for one year.	ditto
291	Conspiracy to defraud.	ditto	Imprisonment for three years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXX.—FALSE PRETENCES—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
292	Frauds on sale or mortgage of property.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
293	Pretending to exercise witchcraft or tell fortunes.	May arrest without warrant.	Imprisonment for one year.	Subordinate court of the first or second class.
294	Obtaining registration, etc., by false pretence.	ditto	ditto	ditto

CHAPTER XXXI.—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES.

295(1)	Receiving or retaining stolen property.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second cass.
(2)	Receiving property unlawfully obtained, converted or disposed of.	ditto	Same punishment as offender by whom the property was unlawfully obtained, converted or disposed of.	Any court by which the unlawful obtaining, conversion or disposal of the property would be triable.
296	Failing to account for possession of property suspected to be stolen or unlawfully obtained.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

CHAPTER XXXII.—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING.

298	Fraudulently disposing of trust property	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXX.—FALSE PRETENCES—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
292	Frauds on sale or mortgage of property.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
293	Pretending to exercise witchcraft or tell fortunes.	May arrest without warrant.	Imprisonment for one year.	Subordinate court of the first or second class.
294	Obtaining registration, etc., by false pretence.	ditto	ditto	ditto

CHAPTER XXXI.—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES.

295(1)	Receiving or retaining stolen property.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second cass.
(2)	Receiving property unlawfully obtained, converted or disposed of.	ditto	Same punishment as offender by whom the property was unlawfully obtained, converted or disposed of.	Any court by which the unlawful obtaining, conversion or disposal of the property would be triable.
296	Failing to account for possession of property suspected to be stolen or unlawfully obtained.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

CHAPTER XXXII.—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING.

298	Fraudulently disposing of trust property	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXII—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING—*(contd.)*

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
299	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.
300	False statements by officials of corporations.	ditto	ditto	ditto
301	Fraudulent false accounting by clerk or servant.	ditto	ditto	ditto
302	False accounting by public officer.	ditto	Imprisonment for two years.	ditto

DIVISION VI.

MALICIOUS INJURIES TO PROPERTY.

CHAPTER XXXIII.—OFFENCES CAUSING INJURY TO PROPERTY.

303	Arson.	May arrest without warrant.	Imprisonment for life.	
304	Attempt to commit arson.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
305	Setting fire to crops or growing plants.	ditto	ditto	ditto
306	Attempting to set fire to crops or growing plants.	ditto	Imprisonment for seven years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXIII.—OFFENCES CAUSING INJURY TO PROPERTY—(*contd.*)

Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
307	Casting away a vessel.	May arrest without warrant.	Imprisonment for fourteen years, with or without corporal punishment.	
308	Attempt to cast away a vessel.	ditto	Imprisonment for seven years, with or without corporal punishment.	Subordinate court of the first class.
309	Killing or wounding animals.	ditto	Imprisonment for two years.	Any magistrate.
310(1)	Destroying or damaging property in general.	ditto	ditto	ditto
(2)	Destroying or damaging an inhabited house or a vessel with explosives.	ditto	Imprisonment for life, with or without corporal punishment.	
(3)	Destroying or damaging river bank or wall, or navigation works, or bridges.	ditto	Imprisonment for life.	
(4)	Destroying or damaging wills or registers.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
(5)	Destroying or damaging wrecks.	ditto	Imprisonment for seven years.	ditto
(6)	Destroying or damaging railways.	ditto	Imprisonment for fourteen years.	ditto
(7)	Destroying or damaging property of special value.	ditto	Imprisonment for seven years.	ditto
(8)	Destroying or damaging deeds or records.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXIII.—OFFENCES CAUSING INJURY TO PROPERTY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
311	Attempt to destroy or damage property by use of explosives.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
312	Communicating infectious disease to animals.	ditto	Imprisonment for seven years.	ditto
313	Removing boundary marks with intent to defraud.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
314	Removing or injuring survey or boundary marks.	ditto	Imprisonment for three months or a fine of twenty pounds.	Any magistrate.
315	Injuring or obstructing railway works, etc.	ditto	ditto	ditto
316	Threatening to burn any building, etc., or to kill or wound any cattle.	ditto	Imprisonment for seven years.	Subordinate court of the first class.

DIVISION VII.

FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES.

CHAPTER XXXV.—FORGERY.

321	Forgery (where no special punishment is provided).	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first class.
322	Forgery of a will, document of title, security, cheque, etc.	ditto	Imprisonment for life.	

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXV.—FORGERY—*(contd.)*

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
323	Forgery of judicial or official document.	May arrest without warrant.	Imprisonment for seven years.	
324	Forgery, etc., of stamps.	ditto	Imprisonment for seven years.	
325	Uttering false document.	ditto	Same punishment as for forgery of document.	Any court by which forgery of document would be triable.
326	Uttering cancelled or exhausted document.	ditto	ditto	ditto
327	Procuring execution of document by false pretences.	ditto	ditto	ditto
328	Obliterating or altering the crossing on a cheque.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
329	Making or executing document without authority.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
330	Demanding property upon forged testamentary instrument	ditto	Same punishment as for forgery of instrument.	Any court by which forgery of instrument would be triable.
331	Purchasing or receiving forged bank note.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
332	Falsifying warrant for money payable under public authority.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER XXXV.—FORGERY—*(contd.)*

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native *
333	Permitting falsification of register or record.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
334	Sending false certificate of marriage to registrar.	ditto	ditto	ditto
335	Making false statement for insertion in register of births, deaths or marriages	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
	CHAPTER XXXVI.—OFFENCES RELATING TO COIN.			
337	Counterfeiting coin.	May arrest without warrant.	Imprisonment for life.	
338	Making preparations for coining.	ditto	ditto	
339	Clipping coin.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
340	Being in possession of clippings.	ditto	ditto	ditto
341	Uttering counterfeit coin.	ditto	Imprisonment for two years.	ditto
342	Repeated uttering of counterfeit coin.	ditto	Imprisonment for three years.	ditto
343	Uttering piece of metal as coin.	ditto	Imprisonment for one year.	ditto
344	Exporting counterfeit coin.	ditto	Imprisonment for two years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXVII.—COUNTERFEIT STAMPS.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
346	Being in possession, etc., of die or paper used for purpose of making revenue stamps.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
347	Being in possession, etc., of die or paper used for postage stamps.	ditto	Imprisonment for one year or fine of fifty pounds.	ditto

CHAPTER XXXVIII.—COUNTERFEITING TRADE MARKS.

349	Counterfeiting, etc., trade mark.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.

CHAPTER XXXIX.—PERSONATION.

350	Personation in general.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property.	ditto	Imprisonment for seven years.	Subordinate court of the first class
351	Falsely acknowledging deeds, recognizances, etc.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXIX.—PERSONATION—*(contd.)*.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
352	Personation of a person named in a certificate.	May arrest without warrant.	Same punishment as for forgery of certificate.	Any court by which forgery of certificate would be triable.
353	Lending, etc., certificate for purposes of personation.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
354	Personation of person named in a testimonial of character.	ditto	Imprisonment for one year.	ditto
355	Lending, etc., testimonial of character for purposes of personation.	ditto	Imprisonment for two years.	ditto

CHAPTER XL.—SECRET COMMISSIONS AND CORRUPT PRACTICES.

357	Corrupt practices.	Shall not arrest without warrant.	Imprisonment for two years and/or fine of three hundred pounds.	Subordinate court of the first or second class.
358	Secret commission on Government contracts.	Shall not arrest without warrant.	Imprisonment for seven years and/or fine of five hundred pounds.	Subordinate court of the first class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

DIVISION VIII.

ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT.

CHAPTER XL.—ATTEMPTS.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
362	Attempt to commit a felony or misdemeanour.	According as to whether or not the offence is one for which the police may arrest without a warrant.	Imprisonment for two years.	Any court by which the felony or misdemeanour attempted would be triable.
363	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards.	May arrest without warrant.	Imprisonment for seven years.	Any court by which the felony attempted would be triable.
364	Soliciting or inciting others to commit offence in Colony or elsewhere.	May arrest without warrant if arrest for offence solicited or incited may be made without warrant, but not otherwise.	Same punishment as for the offence solicited or incited.	Any court by which offence solicited or incited would be triable.
365	Neglecting to prevent commission or completion of a felony'	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
	CHAPTER XLI.—CONSPIRACIES.			
366	Conspiracy to commit a felony.	May arrest without warrant.	Imprisonment for seven years.	Any court by which the felony would be triable.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XLI.—CONSPIRACIES—*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
367	Conspiracy to commit a misdemeanour.	According as to whether or not the misdemeanour is one for which the police may arrest without warrant.	Imprisonment for two years.	Any court by which the misdemeanour would be triable.
368	Conspiracy to effect certain specified purposes.	Shall not arrest without warrant	ditto	Subordinate court of the first or second class.
	CHAPTER XLII.—ACCESSORIES AFTER THE FACT.			
370	Being an accessory after the fact to a felony.	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first or second class.
371	Being an accessory after the fact to a misdemeanour.	Shall not arrest without warrant	Imprisonment for two years.	ditto
	OFFENCES UNDER OTHER LAWS.			
	If punishable with death or imprisonment for seven years or upwards.	May arrest without warrant.		
	If punishable with imprisonment for three years or upwards, but less than seven.	ditto		Subordinate court of the first class.
	If punishable with imprisonment for one year or upwards, but less than thre .	Shall not arrest without warrant		Subordinate court of the first or second class.
	If punishable with imprisonment for less than one year or with fine only.	ditto		Any magistrate.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

SECOND SCHEDULE.

FORMS OF STATING OFFENCES IN INFORMATIONS.

1.—MURDER.

Murder, contrary to section 187 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., murdered *J. S.*

2.—ACCESSORY AFTER THE FACT TO MURDER.

Accessory after the fact to murder, contrary to section 203 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., well knowing that one, *H. C.*, did on the.....day of ....., in the province of....., murder *C. C.*, did on the .....day of....., in the province of....., and on other days thereafter receive, comfort, harbour, assist and maintain the said *H.C.*

3.—MANSLAUGHTER.

Manslaughter, contrary to section 188 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., unlawfully killed *J. S.*

4.—RAPE.

Rape, contrary to section 123 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., had carnal knowledge of *E. F.*, without her consent.

SECOND SCHEDULE (*Contd.*).

5.—WOUNDING.

First Count.

Wounding with intent, contrary to section 211 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the. .....day of....., 19....., in the province of ...., wounded *C. D.*, with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said *A. B.*

Second Count.

Wounding, contrary to section 217 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., unlawfully wounded *C. D.*

6.—THEFT.

First Count.

Stealing, contrary to section 252 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., stole a bag, the property of *C. D.*

Second Count.

Receiving stolen goods, contrary to section 295 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., did receive a bag, the property of *C. D.*, knowing the same to have been stolen.

7.—THEFT BY CLERK.

Stealing by clerks and servants, contrary to section 258 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *M. N.*, stole from the said *M. N.*, 10 yards of cloth.

SECOND SCHEDULE (*Contd.*).

8.—ROBBERY.

Robbery with violence, contrary to section 272 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., robbed *C. D.* of a watch, and at, or immediately before or immediately after, the time of such robbery did use personal violence to the said *C. D.*

9.—BURGLARY.

Burglary, contrary to section 280, and stealing, contrary to section 256 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., in the night of the.....day of....., 19....., in the province of....., did break and enter the dwelling house of *C. D.*, with intent to steal therein, and did steal therein one watch, the property of *S. T.*, the said watch being of the value of £10.

10.—THREATS.

Demanding property by written threats, contrary to section 275 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to extort money from *C.D.*, caused the said *C.D.*, to receive a letter containing threats of injury or detriment to be caused to *E. F.*

11.—ATTEMPTS TO EXTORT.

Attempt to extort by threats, contrary to section 276 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to extort money from *C. D.*, accused or threatened to accuse the said *C. D.*, of an unnatural offence.

SECOND SCHEDULE (*Contd.*).

12.—FALSE PRETENCES.

Obtaining goods by false pretences, contrary to section 287 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to defraud, obtained from *S. P.* 5 yards of cloth by falsely pretending that the said *A. B.* was a servant to *J. S.*, and that he, the said *A. B.*, had then been sent by the said *J. S.*, to *S. P.*, for the said cloth, and that he, the said *A. B.*, was then authorised by the said *J. S.* to receive the said cloth on behalf of the said *J. S.*

13.—CONSPIRACY TO DEFRAUD.

Conspiracy to defraud, contrary to section 291 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., and *C. D.*, on the.....day of....., and on divers days between that day and the.....day of....., in the province of....., conspired together with intent to defraud by means of an advertisement inserted by them, the said *A.B.* and *C.D.*, in the *H.S.* newspaper, falsely representing that *A.B.* and *C.D.* were then carrying on a genuine business as jewellers at....., in the province of....., and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of £2.

14.—ARSON.

Arson, contrary to section 303 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ..... wilfully and unlawfully set fire to a house.

SECOND SCHEDULE (*Contd.*).

15.—ARSON AND ACCESSORY BEFORE THE FACT.

A. B., Arson, contrary to section 303 of the Penal Code.

C. D., accessory before the fact to same offence.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., wilfully and unlawfully set fire to a house.

C. D., on the same day, in the province of....., did counsel or procure the said *A. B.*, to commit the said offence.

16.—OBSTRUCTING RAILWAY.

First Count.

Offence under section 51 of the Kenya and Uganda Railway Ordinance, 1927.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to obstruct the use of the Kenya and Uganda Railway, displaced a sleeper belonging to the said railway.

Second Count.

Obstructing railway, contrary to section 213 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., by unlawfully displacing a sleeper belonging to the Kenya and Uganda Railway, caused an engine or vehicle in use upon the said railway to be obstructed in its passage.

17.—DAMAGE.

Damaging trees, contrary to section 310 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., wilfully and unlawfully damaged a cocoa tree there growing.

SECOND SCHEDULE (*Contd.*).

18.—FORGERY.

First Count.

Forgery, contrary to section 322 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., forged a certain will purporting to be the will of *C. D.*

Second Count.

Uttering a false document, contrary to section 325 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., knowingly and fraudulently uttered a certain forged will purporting to be the will of *C. D.*

19.—COUNTERFEIT COIN.

Uttering a counterfeit coin, contrary to section 341 of the Penal Code.

A. B., on the.....day of....., at..... market in the province of....., uttered a counterfeit shilling, knowing the same to be counterfeit.

20.—PERJURY.

Perjury, contrary to section 98 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being a witness upon the trial of an action in the Supreme Court of Kenya at Nairobi, in which one.....was..... plaintiff, and one.....was defendant, knowingly gave false testimony that he saw one, *M. W.*, in the street called the..... on the.....day of.....

SECOND SCHEDULE (*Contd.*).

21.—DEFAMATORY LIBEL.

Publishing defamatory matter, contrary to section 177 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., published defamatory matter affecting *E. F.*, in the form of a letter (book, pamphlet, picture, or as the case may be).

(Innuendo should be stated where necessary.)

22.—FALSE ACCOUNTING.

First Count.

Fraudulent false accounting, contrary to section 301 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *C. D.*, with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said *C. D.*, his employer, purporting to show that on the said day £100 had been paid to *L. M.*

Second Count.

Same as first count.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *C. D.*, with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said *C. D.*, his employer, a material particular, that is to say, the receipt on the said day of £50 from *H. S.*

23.—THEFT BY AGENT.

First Count.

Stealing by agents and others, contrary to section 260 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., stole £100 which had been entrusted to him by *H. S.*, for him, the said *A. B.*, to retain in safe custody.

SECOND SCHEDULE (*Contd.*).

Second Count.

Stealing by agents and others, contrary to section 260 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., stole £100 which had been received by him, for and on account of *L. M.*

24.—PREVIOUS CONVICTION.

Prior to commission of the said offence, the said *A. B.* had been previously convicted of.....on the.....day of....., 19....., at the.....held at.....

THIRD SCHEDULE.

FEES TO BE TAKEN BY MAGISTRATES UNDER SECTION 354.

	Shs.	Cts.
For drawing case and copy—		
When the case does not exceed five folios of one hundred words each	10	00
When the case exceeds five folios, then for every additional folio ...	1	00
For the recognizance to be taken in pursuance of section 354 ...	5	00
For every enlargement or renewal thereof	2	50
For certificate of refusal of case	2	00

No. 12 OF 1930.

[31ST MAY, 1930.] Date of assent.

An Ordinance to Authorise the Governor to make Advances to Farmers.

31st May, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Agricultural Advances Ordinance, 1930." Short title.

2. In this Ordinance— Interpretation.

" Central Board " means the Central Agricultural Advances Board established under section 3 of this Ordinance;

" Local Board " means a local board established under section 4 of this Ordinance;

" Farmer " means the owner or occupier of any land in the Colony which is used for agricultural or pastoral purposes.

3. (1) There is hereby established a Central Agricultural Advances Board which shall consist of— Appointment of Central Board.

(*a*) the Treasurer as Chairman;

(*b*) the Commissioner for Local Government, Lands and Settlement;

(*c*) the Director of Agriculture;

(*d*) two unofficial members appointed by the Governor, who shall hold office during the Governor's pleasure.

(2) For each unofficial member the Governor may appoint a deputy who shall hold office for so long as the unofficial member for whom he is appointed holds office.

4. (1) The Governor may appoint local boards, subordinate to the Central Board, in such provinces or districts as he may think fit. Such local boards shall consist of the Provincial Commissioner as chairman and such unofficial members as the Central Board may from time to time approve. Appointment of local boards.

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(2) In the absence of the Provincial Commissioner, a senior administrative officer approved by the Central Board shall be chairman.

Appointment of secretary and staff.

5. (1) The Central Board may appoint a fit and proper person to act as secretary to the Board, and may appoint such staff for itself or for local boards as to the Central Board may appear necessary.

(2) The secretary to the Board shall exercise such powers and perform such duties as may be assigned to him by the Central Board.

(3) The secretary and staff shall be remunerated out of the funds at the disposal of the Central Board at such rates as the Central Board may prescribe.

Funds of the Central Board.

6. The funds of the Central Board shall consist of such moneys as the Governor may, with the sanction of the Legislative Council, from time to time authorise the Treasurer to pay to the Central Board.

Applications for advances.

7. (1) All applications for advances shall be in a form prescribed by the Central Board and shall be addressed to the chairman of the appropriate local board, and the particulars in every application shall be verified by statutory declaration.

Method of dealing with applications.

(2) The local board shall forward every such application, together with its comments thereon, to the Central Board, which shall consider each application on its merits, and shall fix the amounts (if any) to be allowed, the conditions on, and the time at which such advances shall be made, and the purposes to which such advances shall be applied, which purposes may, at the discretion of the Central Board, include the necessary personal expenses of a farmer.

Rate of interest on advances.

(3) All advances shall bear interest at the rate of eight per centum per annum.

Advance to be charge on land and produce.

8. All moneys advanced under the authority of this Ordinance, with interest thereon and all charges incidental thereto and to the repayment thereof, shall be a charge on the land specified in the prescribed form of application, and upon the crops grown or to be grown thereon, when reaped or gathered therefrom, and on the product or article to be cured, made or manufactured from such crops or produce; and upon

all farm livestock ordinarily kept on the said land, including the natural increase thereof: Provided that any charge or encumbrance created or any judgment duly registered before the date of the advance shall have priority over the charge hereby created.

Notification of advances to Registrar of Titles.

9. As soon as possible after the approval of any advances by the Central Board the secretary shall fill up the notification in the form in the Schedule to this Ordinance and shall sign and forward the same to the Registrar of Titles, who shall forthwith without charge register such notification against the title affected.

Priority of advances.

10. Notwithstanding anything in any Ordinance contained, or any provision of law or equity to the contrary, immediately upon the making of the advances authorised by this Ordinance, all persons dealing with the land in respect of which the advance is made or any interest therein shall be deemed to have notice of such advances, and all such dealings shall be and be construed to be subject to the charge and priority created by this Ordinance.

Notification of repayment.

11. When any advance made under this Ordinance together with all interest and charges thereon has been repaid in full the secretary shall forthwith notify the Registrar of Titles of the fact of such repayment. The Registrar of Titles shall thereupon without charge register such notification against the title affected, and thereupon the charge created by section 8 of this Ordinance shall cease and determine.

Misapplication of advances.

12. Any farmer who shall apply any advances made to him under the provisions of this Ordinance to any purposes other than those specified by the Central Board shall be liable, on conviction before a magistrate of the first or second class, to imprisonment, with or without hard labour, for any term not exceeding six months or to a fine of £100 or to both such fine and imprisonment.

Wrongful disposal of crops.

13. (1) All crops to be reaped from any land and all produce derived from such crops, and all farm livestock ordinarily kept on any land in respect of which a farmer shall have obtained an advance under the provisions of this Ordinance, shall be dealt with and disposed of as the Central Board may direct. The Central Board in making any such direction shall

have power to direct that the proceeds of the sale of any such crops, produce or livestock shall be paid by the purchaser wholly or in part to the Central Board in satisfaction or partial satisfaction of the amount due to the Central Board from such farmer. All crops, produce and livestock as aforesaid in respect of which a direction for disposal has been made by the Central Board shall, until disposed of, be held in trust for the Central Board and managed with due care by the farmer. In the absence of any such direction for disposal as aforesaid all crops, produce and livestock as aforesaid may be dealt with and disposed of by the farmer as he may see fit.

(2) No such direction shall be given in respect of any crops, produce or farm livestock which are the subject-matter of any contract lawfully entered into by the farmer before the date on which an application for an advance is made by such farmer.

(3) Any farmer who has obtained an advance under this Ordinance, and who disposes of any crops, produce or farm livestock as aforesaid, in any manner contrary to the directions of the Central Board, shall be liable, on conviction before a magistrate of the first or second class, to imprisonment, with or without hard labour, for any term not exceeding six months, or to a fine of £100 or to both such fine and imprisonment.

Advances not to be levied upon.

14. No part of any advance made under this Ordinance shall be liable to levy or attachment in execution of any judgment or decree of any court.

Power to enter premises.

15. Any person duly authorised in writing by the Central Board may, at all reasonable times, enter upon and into any land owned or occupied by any farmer to whom an advance has been made under this Ordinance, or into any premises situated on such land and may examine and inspect any crops growing upon or severed from such land and any produce of any such crops or any farm livestock upon such land.

Obstructing an inspection.

16. Any person who knowingly obstructs any person authorised as aforesaid in any such inspection as is authorised by this Ordinance shall be liable on conviction before a magistrate of the first or second class to a fine not exceeding twenty pounds.

SCHEDULE.

FARMERS TO WHOM ADVANCES HAVE BEEN MADE.

Application Number.	Name and address of Farmer.	Name of Farm.	Land Office Number.	Date of Advance.

No. 13 OF 1930.

Date of assent. [10TH JUNE, 1930.]

An Ordinance to Amend the Local Government (Rating) Ordinance, 1928.

Date of commencement. *10th June, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Local Government (Rating) (Amendment) Ordinance, 1930," and shall be read as one with the Local Government (Rating) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance."

No. 20 of 1928.

Addition of proviso to section 5 of the Principal Ordinance.

2. Section 5 of the Principal Ordinance is hereby amended by the addition thereto at the end thereof of the following proviso :—

" Provided that in the case of the first valuation roll prepared for any local authority, the Commissioner for Local Government may by certificate under his hand declare that the value of any improvements as required to be shown by paragraph (*c*) of this section need not be included in such valuation roll, and such valuation roll shall be deemed to be a valid and proper valuation roll notwithstanding that it does not contain a valuation of such improvements."

Amendment of section 26 of the Principal Ordinance.

3. Section 26 of the Principal Ordinance is hereby amended by inserting the words " or tenants in common " after the word " owners " in the fifth line of the section.

Tenants in common.

4. When any rate imposed upon any tenants in common of rateable property shall remain unpaid for a period of three months after the date on which such rate shall have become fixed to become due and payable, the local authority may at any time within twelve months after the imposing of the rate, demand the amount of such rate or any part thereof from any one of such tenants in common, and on non-payment

thereof may, after one month from the date of such demand, recover the same from such tenant in common, and every such tenant in common by whom such rates have been paid or from whom they have been recovered may recover from each of the other tenants in common the proportion of such rates which is payable by him, and for the purposes of such recovery the production of the receipt for such rates so paid by or recovered from such tenant in common shall be conclusive proof that such amount was so paid by or recovered from him.

Jurisdiction of magistrate of the first class. *Cap.* 5.

5. Anything in the Courts Ordinance to the contrary notwithstanding, a magistrate of the first class shall be deemed to have jurisdiction to hear appeals under section 12 of the Principal Ordinance, to issue warrants under section 21 of the Principal Ordinance, and to hear and determine claims for the recovery of rates under section 22 of the Principal Ordinance, and these sections shall be construed as if the reference therein to the magistrate having jurisdiction were a reference to a magistrate of the first class.

No. 14 OF 1930.

Date of assent. [10TH JUNE, 1930.]

An Ordinance to Amend the Wireless Telegraphy Ordinance.

Date of commencement. *10th June, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Wireless Telegraphy (Amendment) Ordinance, 1930," and shall be read as one with the Wireless Telegraphy Ordinance (Chapter 118 of the Revised Edition), hereinafter referred to as " the Principal Ordinance."

Amendment of section 2 of the Principal Ordinance. **2.** Section 2 of the Principal Ordinance is hereby amended by adding thereto the following definition :—

" ' Apparatus for wireless telegraphy ' includes any wireless receiving apparatus."

NO. 15 OF 1930.

[10TH JUNE, 1930.] **Date of assent.**

An Ordinance to Amend the Criminal Procedure Ordinance.

10th June, 1930. **Date of commencement.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Criminal Procedure (Amendment) Ordinance, 1930," and shall be read as one with the Criminal Procedure Ordinance (Chapter 7 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title. *Cap. 7.*

2. Section 167 of the Principal Ordinance as substituted by section 2 of the Criminal Procedure (Amendment) Ordinance, 1926, is hereby repealed and the following substituted therefor :— Repeal and replacement of section 167 of the Principal Ordinance.

" 167. (1) Whenever a magistrate issues a summons No. 31 of 1926 he may if he see reason so to do and shall when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused provided that he pleads guilty in writing or appears by an advocate.

(2) But the magistrate inquiring into or trying the case may, in his discretion, at any subsequent stage of the proceedings, unless the accused has pleaded guilty, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time prescribed for such payment the magistrate may forthwith issue a summons calling upon such accused per-

son to show cause why he should not be committed to prison for such term as the magistrate may then prescribe. If such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such term as the magistrate may think fit.

(4) If in any case in which under this section the attendance of an accused person is dispensed with previous convictions are alleged against such person and are not admitted in writing or through such person's advocate the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(5) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused."

Application of Ordinance.

3. The provisions of this Ordinance shall apply to fines imposed before but unpaid at the date of commencement of this Ordinance.

NO. 16 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Interpretation and General Clauses Ordinance.

10th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Interpretation and General Clauses (Amendment) Ordinance, 1930," and shall be read as one with the Interpretation and General Clauses Ordinance, hereinafter referred to as " the Principal Ordinance." Short title. *Cap.* 1.

2. Paragraphs (40) and (41) of section 2 of the Principal Ordinance are hereby repealed and the following paragraphs are substituted therefor :— Amendment of section 2 (40) and (41) of *Cap.* 1.

" (40) ' Provincial Commissioner ' means the officer in charge of a province, and ' District Commissioner ' means the District Officer in charge of a district;

(41) ' District Officer ' means any administrative officer subordinate to a Provincial Commissioner."

3. Section 25 of the Principal Ordinance is hereby repealed. Repeal of section 25 of *Cap.* 1.

4. Where in any Ordinance or in any order, rule, proclamation, notice, contract or other document any of the expressions mentioned in the first column of the Schedule to this Ordinance is used, there shall be substituted for such expression the similarly numbered expression in the second column of the said Schedule. Amendment of designations used in Ordinances, etc.

SCHEDULE.

No.	*First Column.*	*No.*	*Second Column.*
1.	Senior Commissioner ...	1.	Provincial Commissioner.
2.	Resident Commissioner ...	2.	District Commissioner.
3.	Assistant District Commissioner ...	3.	District Officer.
4.	Assistant Resident Commissioner ...	4.	District Officer.

No. 17 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Defence Force Ordinance, 1927.

10th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Defence Force (Amendment) Ordinance, 1930," and shall be read as one with the Defence Force Ordinance, 1927, hereinafter referred to as " the Principal Ordinance." Short title. No. 12 of 1928.

2. Section 4 of the Principal Ordinance is hereby repealed and the following substituted therefor :— Repeal and replacement of section 4 of the Principal Ordinance.

" 4. (1) The Governor shall appoint a Central Defence Committee consisting of the Officer Commanding Troops, Commandant, and one delegate from each Defence Force District.

(2) The Central Defence Committee shall perform such functions and shall execute such powers and duties as may be prescribed by this Ordinance or by any regulations made hereunder.

(3) It shall be lawful for the Governor to appoint a Central Sub-committee, consisting of the Officer Commanding Troops, Commandant and three other members of the Central Defence Committee, for the performance of such functions and the execution of such powers and duties as may be delegated to the Sub-committee by the Central Defence Committee."

3. Sub-section (2) of section 23 of the Principal Ordinance is hereby repealed and the following substituted therefor :— Repeal and replacement of sub-section (2) of section 23 of the Principal Ordinance.

" (2) In the case of sudden and imminent danger in any province or district, when it is not possible to obtain the authority of the Governor without undue delay,

the civil officer in charge of such province or district may, for the defence of the province or district or any part thereof or for the protection of life and property therein, by proclamation in the name of the Governor call out the members of the Defence Force resident in such province or district, but in such case such officer shall forthwith report to the Governor such calling out and any subsequent step taken by him."

No. 18 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Detention Camps Ordinance, 1925.

10th June, 1930. Date of commencement

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Detention Camps (Amendment) Ordinance, 1930," and shall be read as one with the Detention Camps Ordinance, 1925, hereinafter referred to as " the Principal Ordinance." Short title.

2. Section 5 of the Principal Ordinance, as amended by the Detention Camps (Amendment) Ordinance, 1926, is hereby repealed, and the following substituted therefor :— No. 25 of 1925.

" 5. (1) When a native is convicted of any offence and the Court, after taking into consideration the apparent age, antecedents, character and state of health of the person accused and all the circumstances of the case, is of opinion that the offence would be adequately punished by a fine or a sentence of imprisonment not exceeding six months, the Court may instead of awarding a sentence of a fine or imprisonment award a sentence of detention in a detention camp, and the prisoner shall thereupon be detained in a detention camp. Repeal and replacement of section 5 of the Principal Ordinance. No. 6 of 1926.

(2) A sentence of detention shall in no case exceed the period of imprisonment to which the prisoner could have been sentenced if this Ordinance had not been passed.

(3) Where any Ordinance provides that an offence is punishable by fine only or by fine and imprisonment in default of payment of such fine, the Court may order that in default of payment the prisoner undergo a sentence of detention in lieu of imprisonment."

Repeal and replacement of section 6 of the Principal Ordinance.

3. Section 6 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

" 6. Where a sentence of fine or imprisonment or detention comes before the Supreme Court on appeal or in exercise of its powers of revision or confirmation the Supreme Court may, after taking into consideration the apparent age, antecedents, character or state of health of the prisoner and all the circumstances of the case, alter any sentence of fine or imprisonment to a sentence of detention or a sentence of detention to a sentence of fine or imprisonment."

Repeal and replacement of section 7 of the Principal Ordinance.

4. Section 7 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

" 7. Where a sentence of fine or imprisonment or detention is awarded by a Native Tribunal, a revising officer may, after taking into consideration the apparent age, antecedents, character and state of health of the prisoner and all the circumstances of the case, alter any sentence of fine or imprisonment to a sentence of detention or a sentence of detention to a sentence of fine or imprisonment."

Period of detention.

5. No native shall be sentenced to detention for a period exceeding six months in all, and no sentence of detention shall be passed on any native who is proved to have previously undergone more than one term of imprisonment.

Repeal of section 13 of the Principal Ordinance.

6. Section 13 of the Principal Ordinance is hereby repealed.

Repeal of Schedule to the Principal Ordinance.

7. The Schedule to the Principal Ordinance as from time to time amended is hereby repealed.

No. 19 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Electric Power Ordinance.

10th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—.

1. This Ordinance may be cited as " the Electric Power (Amendment) Ordinance, 1930," and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title. *Cap.* 165.

2. Section 19 of the Principal Ordinance is hereby amended by deleting the seventh line of paragraph (*a*) of the section and substituting therefor the following words : Amendment of section 19 of the Principal Ordinance.

"distributing licence, such local authority shall make" and by substituting the words " decision of the Governor in Council " for the words " Governor's decision " in the third line of paragraph (*g*) of the section.

3. Section 39 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :— Repeal and replacement of section 39 of the Principal Ordinance.

" 39. (1) The area of supply shall be the area named for that purpose in the licence. Area of supply and regulation of supply beyond area.

(2) The licensee shall not at any time supply electrical energy or (except for the purpose of a licence) erect or lay down any works beyond the area of supply otherwise than as may be permitted under authority of the Governor in Council either under sub-section (3) of this section or under section 37.

(3) Where the owner or occupier of any premises is desirous of obtaining a supply of electrical energy from any licensee within whose licensed area of supply those

premises are not situate, the Governor in Council may, with the consent of the local authority (if any) within whose district the premises are situate and the licensee (if any) authorised by licence to supply electrical energy to such premises, authorise the first-mentioned licensee to supply electrical energy to those premises on such terms and subject to such conditions as the Governor in Council may think fit :

Provided that, if in the opinion of the Governor in Council any consent required by this sub-section is unreasonably withheld, the Governor in Council may proceed as if such consent had been given :

Provided further that the authority granted under this section shall lapse with the termination, for whatever cause, of the licence.

(4) An authority given by the Governor in Council under sub-section (3) of this section shall, unless it specifically states otherwise, confer any such powers and impose any such duties on the licensee as would have been conferred or imposed by this Ordinance if the premises and the route along which the lines are to be laid for the purpose of giving supply were within the licensee's local area, anything in the licence notwithstanding.

(5) If the licensee supplies electrical energy or erects or lays down any works in contravention of this section, the Governor in Council may revoke the licence on such terms as he thinks just."

Amendment of section 44 of the Principal Ordinance.

4. Section 44 of the Principal Ordinance is hereby amended by deleting the words " sub-section (9) of " in paragraph (*g*) of sub-section (1) of the section.

No. 20 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Immigration Restriction Ordinance.

10th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Immigration Restriction (Amendment) Ordinance, 1930," and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter called " the Principal Ordinance." Short title. *Cap.* 62.

2. Paragraph (*b*) of section 4 of the Principal Ordinance is hereby amended and shall be read as if the words " or air forces " were added at the end thereof. Amendment of section 4 (*b*) of the Principal Ordinance.

3. Paragraph (*d*) of section 4 of the Principal Ordinance is hereby amended by the deletion therefrom of the words " and who is possessed of a guarantee in the form set out in Schedule B of this Ordinance signed by the local consular representative of such power ". Amendment of section 4 (*d*) of the Principal Ordinance.

4. Paragraph (*f*) of section 4 of the Principal Ordinance is hereby amended and shall be read as if the last line thereof were deleted, and the following substituted therefor :— Amendment of section 4 (*f*) of the Principal Ordinance.

" (*d*), (*e*), (*f*) and (*g*) of section 5."

5. Paragraph (*h*) of section 5 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor :— Repeal and replacement of section 5 (*h*) of the Principal Ordinance.

" 5. (*h*) Any person entering or endeavouring to enter the Colony who not having received a free pardon has been convicted in the Colony of murder or of any offence for which a sentence of imprisonment has been passed for a term of not less than six months."

Repeal of section 6 (2) of the Principal Ordinance.

6. Section 6 of the Principal Ordinance is hereby amended :

(*a*) by deleting the figure (1) after the number 6 at the beginning of the section ; and

(*b*) by deleting sub-section (2).

Repeal and replacement of section 8 of the Principal Ordinance.

7. Section 8 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

" 8. Any prohibited immigrant making his way into, or being found within the Colony may be ordered by the immigration officer to leave the Colony, and if such prohibited immigrant shall fail to leave the Colony within such time as may be considered reasonable by the immigration officer, he shall be guilty of an offence against this Ordinance. Any person convicted under this section may, in addition to liability to removal or otherwise , be imprisoned with or without hard labour for any term not exceeding six months, provided that such imprisonment shall cease if and when arrangements are made for the deportation of an offender from the Colony."

Repeal and replacement of section 9 (2) of the Principal Ordinance.

8. Sub-section (2) of section 9 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor :—

" 9. (2) Proof adduced within three years after any person has entered the Colony that he belonged at the date of entry to any of the classes whose entry is prohibited shall be sufficient evidence that such person is a prohibited immigrant and such person shall then be liable to be dealt with as a prohibited immigrant."

Repeal and replacement of section 11 of the Principal Ordinance.

9. Section 11 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

" 11. (1) Any person appearing to be a prohibited immigrant under paragraph (*a*) of section 5, and not coming within the provisions of any of the paragraphs

(*b*), (*c*), (*d*), (*e*), (*f*), (*g*), and (*h*) of the said section, may be granted a conditional permit to enter the Colony upon depositing with the immigration officer—

(*a*) if a native of Asia or Africa, the sum of ten pounds or such other sum as the Governor in Council may from time to time order;

(*b*) in the case of any other person, the sum of fifty pounds:

Provided that the immigration officer may, in lieu of requiring such deposit, require the intending immigrant to give security by bond, in the form set out in Schedule A to the amount of such deposit with one or more sureties to be approved by the immigration officer and resident in the Colony conditional on the intending immigrant satisfying the immigration officer within a period of twelve months from the date of his entering the Colony that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge.

(2) Whenever the condition of a bond taken under the preceding sub-section shall have been broken the Attorney General or the Principal Immigration Officer may sue and recover for the use of His Majesty the amount secured by such bond."

10. The following section, to be numbered 11A, shall be deemed to be inserted between sections 11 and 12 of the Principal Ordinance:— **Insertion of section 11A between sections 11 and 12 of the Principal Ordinance.**

Conditional permits.

"11A. (1) Whenever the immigration officer shall, under the provisions of the last preceding section, allow a person appearing to be a prohibited immigrant to enter the Colony, he shall grant to such person a conditional permit in the form set out in Schedule B to this Ordinance.

(2) Every person to whom such permit has been granted shall report himself personally or by letter at such times as may be specified in the permit to the officer issuing such permit or to such officer in the service of the Government as the officer issuing the permit may from time to time direct: Provided that whenever a holder of

a conditional permit shall at any time during the continuance of such permit change his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided.

(3) If such person shall, at any time within a period of twelve months from the date of his entering the Colony, satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, the immigration officer may cancel the conditional permit granted to such person and return to him his deposit.

(4) If such person shall, at the conclusion of the period aforesaid, fail to satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, his deposit may be forfeited and he may be treated as a prohibited immigrant : Provided that if at any time during the period aforesaid it shall appear to an immigration officer that it is not likely that such a person will, at the conclusion of the period aforesaid, satisfy him that he is no longer a prohibited immigrant and that he is not likely to become a pauper or a public charge, then and in such case, the immigration officer may bring such person before a magistrate and such magistrate may declare that such person is a prohibited immigrant, and that his deposit shall be forfeited."

Amendment of section 12 of the Principal Ordinance.

11. Section 12 of the Principal Ordinance is hereby amended and shall be read as if the words " or,with the consent of the Government of the country concerned, to such port or place outside the Colony as the Governor may direct "were inserted between the words " birth " and " and " which occur in the fifth line thereof.

Amendment of section 16 of the Principal Ordinance.

12. Section 16 of the Principal Ordinance is hereby amended and shall be read as if the last two words of the sixth line thereof and the seventh, eighth and ninth lines thereof were deleted.

Amendment of section 19 of the Principal Ordinance.

13. Section 19 of the Principal Ordinance is hereby amended and shall be read as if the words " thirty-seven pounds ten shillings " which occur in the fourth and fifth lines thereof were deleted and the words " fifty pounds " substituted therefor.

14. Paragraph (*a*) of section 21 of the Principal Ordinance is hereby repealed and the following paragraph substituted therefor :— Repeal and replacement of section 21 (*a*) of the Principal Ordinance.

" 21. (a) For a visiting pass a sum not exceeding fifty pounds, with an additional sum not exceeding fifty pounds where the pass includes the wife and children of the applicant."

15. Paragraph (*b*) of section 21 of the Principal Ordinance is hereby repealed and the following paragraph substituted therefor :— Repeal and replacement of section 21 (*b*) of the Principal Ordinance.

" 21 (*b*) For an embarkation pass a sum not exceeding fifty pounds for each adult, and twenty-five pounds for each child."

16. Section 37 of the Principal Ordinance is hereby repealed and the following section substituted therefor :— Repeal and replacement of section 37 of the Principal Ordinance.

" 37. When any person has been convicted by any court within a period of five years from the date of entering the Colony of murder or an offence for which the court has imposed a sentence of imprisonment the Governor may, if he thinks fit, make an order requiring such person to leave the Colony within a time fixed by the order and thereafter to remain out of the Colony, and such person shall be liable to be dealt with as a prohibited immigrant."

17. Schedules A, B and C of the Principal Ordinance are hereby repealed and the following substituted therefor :— Replacement of Schedules A, B and C of the Principal Ordinance.

SCHEDULE A.

FORM OF BOND UNDER SECTION 11.

BE IT KNOWN UNTO ALL MEN by these presents that we[1].....
are held and firmly bound unto His Majesty King George V, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland, King, Defender of the Faith, in the sum of [2].....of good and lawful money of the Colony and Protectorate of Kenya to be paid to His Majesty, his heirs and successors. To which payment well and truly to be made, we bind ourselves, and each and every of us, jointly and severally, for and in the

whole, our heirs, executors, and administrators and every of them firmly by these presents.

Sealed with our seals.

Dated this ..... day of ..... 19.....

Now the condition of this obligation is that if the said

[3].....shall satisfy an immigration officer within a period of twelve months from the date of his entering the Colony that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered
in the presence of

---

[1] Insert names and descriptions of intending immigrants and one or more sureties.
[2] Insert, if intending immigrant is a native of Asia or Africa, ten pounds if any other person, fifty pounds.
[3] Insert name of intending immigrant.

SCHEDULE B.

CONDITIONAL PERMIT GRANTED UNDER SECTION 11A (1).

No..... Issued at..... Date.....

Sum deposited, Sh.....

Deposit made by.....

(or if a Bond has been taken) Amount of Bond, Sh.....

Date of Bond.....day of .....19.....

Names and addresses of Sureties.....

Permission is hereby granted to the person (or persons) named below to enter the Colony and Protectorate of Kenya and to remain therein for a period of twelve months from the date of this permit, and no longer unless the person named as the holder of the permit shall within such period of twelve months satisfy the immigration officer that he is not a prohibited immigrant and is not likely to become a pauper or a public charge.

.....
Immigration Officer.

Name of holder of the permit.....

Nationality..... Sex and age.....

Usual place of residence..... Occupation.....

Height, general description, distinctive marks.....

.....

Postal address in the Colony.....

Names and ages of wife and children if included.....

.....

.....

Signature of permit holder.....

Left thumb print.	Right thumb print.

Section 11A (2) of the Immigration Restriction Ordinance (Chapter 62 of the Laws of Kenya) as amended by the Immigration Restriction (Amendment) Ordinance, 1930 :—

> " Every person to whom such permit has been granted shall report himself personally or by letter at such times as may be specified in the permit to the officer issuing such permit or to such officer in the service of the Government as the officer issuing the permit may from time to time direct : Provided that whenever a conditional permit holder shall at any time during the continuance of such permit change his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided."

ORDERED under section 11 of the Immigration Restriction Ordinance as amended by the Immigration Restriction (Amendment) Ordinance, 1930, to report*.....

.....

.....

personally or by letter to.....

who is requested to inform me if he does not do so and to report on his fitness for cancellation of this conditional permit

eleven months from date. Any change of address to be notified to the officer, who will inform the Immigration Officer, Mombasa/Nairobi, and forward duplicate of permit to the District concerned.

Place.....

Date.....

.....

I.O.

*Immigration Officer to state how often report must be made.

RECEIPT.

This is to acknowledge the receipt of the sum of ..... shillings (Sh.....) being refund of deposit named above.

Signature.....

Place.....

Witness.....

Date.....

No. 21 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Amend the Vagrancy Ordinance.

10th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Vagrancy (Amendment) Ordinance, 1930 ", and shall be read as one with the Vagrancy Ordinance (Chapter 63 of the Revised Edition), hereinafter called " the Principal Ordinance ". Short title. *Cap.* 63.

2. Section 4 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :— Repeal and replacement of section 4 of the Principal Ordinance.

" 4. (1) It shall be lawful for the Governor to declare any building within the Colony to be a house of detention for the occupation of vagrants or of any class of vagrants.

(2) The Governor may from time to time appoint such superintendents and medical and other officers for the management of such houses of detention as he may think fit.

(3) Every such superintendent, medical and other officer shall be deemed to be a person employed in the public service within the meaning of the Penal Code."

3. Section 6 of the Principal Ordinance is hereby repealed and the following substituted therefor :— Repeal and replacement of section 6 of the Principal Ordinance.

" 6. The Superintendent of any house of detention shall use his best endeavours to obtain suitable employment outside such house for the vagrants admitted thereto."

4. Section 9 of the Principal Ordinance is hereby repealed. Repeal of section 9 of the Principal Ordinance.

Amendment of section 10 of the Principal Ordinance.

5. Section 10 of the Principal Ordinance is hereby amended by deleting the words " is obtainable for " where they occur in sub-sections (1) and (3) of the section and substituting therefor the words " has been obtained for and accepted by ".

Amendment of section 11 of the Principal Ordinance.

6. Section 11 of the Principal Ordinance is hereby amended by deleting paragraph (i) of sub-section (1) of the section and renumbering paragraphs (ii) and (iii) as (i) and (ii) and by deleting the words " or in prison " in sub-section (4) of the section.

No. 22 OF 1930.

[10TH JUNE, 1930.] Date of assent.

An Ordinance to Apply a Sum of Money for the Service of the Year ending the 31st day of December, 1930.

10th June, 1930.

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Appropriation Ordinance, 1930." Short title.

2. The Public Revenue for the year 1930, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the services of the year ending the 31st day of December, one thousand nine hundred and thirty, with a sum of three million five hundred and fifty-five thousand, five hundred and thirty-five pounds. Public Revenue charged.

3. The money granted by this Ordinance shall be applied for the purposes and services expressed in the Schedule annexed hereto. Application of money granted.

4. The Treasurer of the Colony and Protectorate of Kenya is hereby authorised and required from time to time upon the warrant or order of the Governor to pay out of the revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the Schedule, the said sum of three million five hundred and fifty-five thousand, five hundred and thirty-five pounds, which will come in course of payment during the year ending on the thirty-first day of December, one thousand nine hundred and thirty. Treasurer's authority for payment.

SCHEDULE.

		£
I.	His Excellency the Governor	18,000
II.	Administration	278,278
IIa.	Administration, Extraordinary	4,121

SCHEDULE—*Contd.*

		£
III.	Agricultural Department	168,518
IIIa.	Agricultural Department, Extraordinary	13,205
IV.	Audit Department	19,689
V.	Coast Agency	6,293
Va.	Coast Agency, Extraordinary	300
VI.	Conference of East African Governors ...	1,750
VII.	Customs Department	50,200
VIII.	Education Department	202,034
VIIIa.	Education Department, Extraordinary ...	12,317
IX.	Forest Department	41,153
IXa.	Forest Department, Extraordinary ...	490
X.	Game Department	12,413
XI.	Interest	67,010
XII.	Judicial Department	35,707
XIII.	Legal Department	10,061
XIV.	Local Government Contribution to Local Authorities	101,375
XIVa.	Local Government Contribution to Local Authorities, Extraordinary	21,172
XV.	Medical Department	250,834
XVa.	Medical Department, Extraordinary ...	6,581
XVI.	Military	129,508
XVIa.	Military, Extraordinary	4,500
XVII.	Miscellaneous Services	79,515
XVIIa.	Miscellaneous Services, Extraordinary ...	18,173
XVIII.	Pensions and Gratuities	118,860
XIX.	Police	176,004
XIXa.	Police, Extraordinary	2,720
XX.	Post Office and Telegraphs	177,313
XXa.	Post Office and Telegraphs, Extraordinary	26,855
XXI.	Printing and Stationery	39,393
XXIa.	Printing and Stationery, Extraordinary...	1,500
XXII.	Prisons	51,047
XXIII.	Public Debt Funded	772,500
XXIV.	Public Works Department	158,861
XXV.	Public Works Recurrent	174,401
XXVI.	Registrar General's Department ...	6,096
XXVII.	Rent and Interest to H. H. the Sultan of Zanzibar	16,000

SCHEDULE—*Contd.*

		£
XXVIII.	Secretariat and Legislative Council ...	20,421
XXIX.	Statistical Department	25,380
XXX.	Survey and Registration Department ...	40,405
XXXa.	Survey and Registration Department, Extraordinary	2,760
XXXI.	Trade and Information Office	5,000
XXXII.	Treasury	27,270
XXXIIa.	Treasury, Extraordinary	200
XXXIII. XXXIIIa.	Public Works Extraordinary	144,352
XXXIV.	Famine Relief Measures, Extraordinary	15,000
	Total ...	£3,555,535

No 23 of 1930.

Date of assent. [10th June, 1930.]

An Ordinance relating to Children born out of Wedlock.

Date of commencement. *10th June, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Legitimacy Ordinance, 1930."

Interpretation. **2.** In this Ordinance, unless the context otherwise requires—

" Legitimated person " means a person legitimated by this Ordinance;

" Date of legitimation " means the date of the marriage leading to the legitimation, or where the marriage occurred before the commencement of this Ordinance, the commencement of this Ordinance;

" Disposition " means an assurance of any interest in property by any instrument whether *inter vivos* or by will;

" Intestate " includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable estate;

" Entailed interest " means an interest in tail or in tail male or in tail female or in tail special.

Legitimation by subsequent marriage of parents. **3.** (1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage resident in the Colony, render that person, if living, legitimate from the commencement of this Ordinance, or from the date of the marriage, whichever last happens.

(2) The legitimation of a person under this Ordinance does not enable him or his spouse, children or remoter issue to take any interest in movable or immovable property save as is hereinafter in this Ordinance expressly provided.

Interest in property of spouse and issue of legitimated person.

(3) The provisions contained in the Schedule to this Ordinance shall have effect with respect to the re-registration of the birth of legitimated persons.

Re-registration of births of legitimated persons.

4. (1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in this Colony or elsewhere and whether a natural-born British subject or not, apply by petition to the Supreme Court praying for a decree declaring that the petitioner is the legitimate child of his parents. and the Supreme Court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person as to the Court may seem just; and such decree shall be binding to all intents and purposes on His Majesty and on all persons whomsoever.

Declarations of legitimacy of legitimated persons.

(2) Every petition under this section shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the Court may by any general rule direct.

(3) In all proceedings under this section the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.

(4) A copy of every petition under this section, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to the Attorney General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.

(5) Where any application is made under this section to the said Court, such person or persons (if any) besides the said Attorney General as the Court shall think fit shall, subject to the rules made under this section, be cited to see proceedings or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings, and oppose the application.

(6) The decree of the said Court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings or is the heir-at-law or next of kin, or other real or personal representative of or derives title under or through a person so cited or made a party; nor shall such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

(7) No proceeding to be had under this section shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction.

(8) The Rules Committee appointed under the Civil Procedure Ordinance, 1924, may make rules for carrying the provisions of this section into effect.

No. 3 of 1924.

Rights of legitimated persons, etc., to take interest in property.

5. (1) Subject to the provisions of this Ordinance, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—

(*a*) in the estate of an intestate dying after the date of legitimation;

(*b*) under any disposition coming into operation after the date of legitimation,

(*c*) by descent under an entailed interest created after the date of legitimation;

in like manner as if the legitimated person had been born legitimate.

Ranking of legitimated children *inter se* and in relation to legitimate children.

(2) Where the right to any property, movable or immovable, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Ordinance, and if more than one such legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority.

Succession on intestacy of legitimated persons and issue.

6. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his movable or immovable property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

Application to illegitimate person dying before marriage of parents.

7. Where an illegitimate person dies after commencement of this Ordinance and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Ordinance with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Personal rights and obligations of legitimated persons.

8. A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Ordinance, the provisions of any Ordinance relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

Death duties.

9. Where a legitimated person or any relative of a legitimated person takes any interest in movable or immovable property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

Provisions as to persons legitimated by extraneous law.

10. (1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than the Colony, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in the Colony be recognised as having been so legitimated from the commencement of this Ordinance or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Ordinance relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse,

children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognized; and accordingly, this Ordinance shall have effect as if references therein to a legitimated person included a person so recognized as having been legitimated.

Meaning of "country."

(3) For the purposes of this section, the expression "country" includes any part of His Majesty's Dominions, as well as a foreign country

Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other.

11. (1) Where, after the commencement of this Ordinance, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her movable or immovable property, and does not leave any legitimate issue her surviving, the illegitimate child, or if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where, after the commencement of this Ordinance, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his movable or immovable property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

Entailed interest.

(3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in movable or immovable property.

Saving.

12. (1) Nothing in this Ordinance shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

(2) Nothing in this Ordinance shall affect the operation or construction of any disposition coming into operation before the commencement of this Ordinance, or affect any rights under the intestacy of a person dying before the commencement of this Ordinance.

SCHEDULE.

REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS.

1. The Registrar General may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Births and Deaths Registration Ordinance, 1928, and such re-registration shall be effected in such manner and at such place as the Governor may by regulations prescribe :

Provided that the Registrar General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

(*a*) the name of a person acknowledging himself to be the father of the legitimated person has been registered under the Births and Deaths Registration Ordinance, 1928; or

(*b*) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or

(*c*) a declaration of the legitimacy of the legitimated person has been made under this Ordinance.

2. It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar General information with a view to obtaining the re-registration of the birth of that person; that is to say—

(*a*) if the marriage took place before the commencement of this Ordinance, within six months of such commencement;

(*b*) if the marriage takes place after the commencement of this Ordinance, within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar General may at any time after the expiration of that time require the parents of a person whom

he believes to have been legitimated by virtue of this Ordinance, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him, within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in any other case there shall be charged in respect of such re-registration such fees, not exceeding in the aggregate ten shillings, as may be prescribed by regulations under this schedule.

No. 2 of 1928.

6. This schedule shall be construed as one with the Births and Deaths Registration Ordinance, 1928.

No. 24 OF 1930.

[13TH JUNE, 1930.] Date of assent.

An Ordinance to make Provision Relating to Chattel Securities and the Transfer of Chattels.

13th June, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Chattels Transfer Ordinance, 1930." Short title.

2. In this Ordinance unless the context otherwise requires :— Interpretation.

" Chattels " means any movable property that can be completely transferred by delivery, and includes machinery, stock and the natural increase of stock as hereinafter mentioned, crops, and wool, but does not include—

(*a*) title-deeds, choses-in-action, negotiable instruments;

(*b*) shares and interests in the stock, funds, or securities of any Government or local authority;

(*c*) shares and interests in the capital or property of any company or other corporate body; or

(*d*) debentures and interest coupons issued by any Government, or local authority, or company, or other corporate body.

" Crops " means coffee berries, tea leaves, sisal leaves, sugar cane, cotton, hemp, hop, wheat, maize, wattle, barley, oat, and grass (whether for hay or for grain), and all cereal and root crops, fruit, and all other crops grown above or below the ground.

" Executed " means signed by the grantor or his attorney.

" Factory " or " workshop " means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article or part of any article.

" Grantee " means the party to an instrument to whom chattels therein referred to, or any interest therein, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation.

" Grantor " means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any interest therein, and includes his executors, administrators, and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation.

" Instrument " means any instrument given to secure the payment of money or the performance of some obligation and includes any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, or lease, and also the following :—

(*a*) Inventories of chattels with receipt thereto attached.

(*b*) Receipts for purchase-money of chattels.

(*c*) Other assurances of chattels.

(*d*) Declarations of trust without transfer.

(*e*) Powers of attorney, authorities, or licences to take possession of chattels as security for any debt.

(*f*) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred.

" Instrument " does not include the following :—

(*a*) Securities over, or leases of, fixtures (except " trade machinery " as hereinafter defined), when mortgaged

or leased in any mortgage or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building.

(*b*) Assignments for the benefit of the creditors of the person making the same.

(*c*) Transfers of or agreements to transfer instruments by way of security.

(*d*) Transfers or assignments of any ship or vessel or any share thereof.

(*e*) Transfers of chattels in the ordinary course of business of any trade or calling.

(*f*) Debentures and interest coupons issued by any Government or local authority.

(*g*) Bills of sale of chattels in any foreign parts, or at sea.

(*h*) Bills of lading, warehouse-keepers' certificates, warrants, or orders for the delivery of chattels, entries in auctioneers' books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented.

(*i*) Debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body.

(*j*) Mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance. *Cap. 98.*

(*k*) Hire-purchase agreements.

" Registrar " means the Registrar-General.

" Registration " means the filing of an instrument with schedule or inventories, or a true copy thereof, with the affidavit hereinafter mentioned.

" Schedule " includes inventory.

" Stock " includes any sheep, cattle, horses, pigs, poultry, and any other living animals.

" Trade machinery " means the machinery used in or attached to any factory or workshop as hereinbefore defined, but does not include—

(*a*) the fixed motive powers, such as the waterwheels, and steam and other engines, and the steam boilers, donkey-engines, and other fixed appurtenances of the said motive powers;

(*b*) the fixed power machinery (such as the shafts, wheels, drums, and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or

(*c*) the pipes for steam, gas, and water.

Attornment or agreement giving power of distress by way of security to be instrument within meaning of Ordinance.

3. (1) An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Ordinance so far as regards any chattels seized or taken under the power of distress:

Provided that where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits thereof, demises the said land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Ordinance.

(2) Machinery and plant used in connexion with the production, preparation or manufacture of agricultural products shall not by reason of being attached to buildings or land become part of the land, nor shall any estate or interest therein pass by virtue of such attachment.

REGISTRATION.

Registration of instrument to be notice.

4. All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Ordinance :

Provided that if registration of such instrument is not renewed pursuant to the provisions of this Ordinance, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal is required by this Ordinance.

Mode of registration.

5. Registration of an instrument shall be effected by filing the same and all schedules indorsed thereon, annexed thereto, or referred to therein, or a true copy of such instrument and the schedules, and an affidavit in the form numbered (1) in the First Schedule hereto or to the like effect, in the office of the Registrar.

Limitation of time for registration.

6. (1) The period within which an instrument may be registered is twenty-one days from the day on which it was executed :

Provided that when the time for registering an instrument expires on a day whereon the Registrar-General's office is closed, the registration shall be valid if made on the next following day on which such office is open.

(2) If there are more grantors than one, the date of execution of the instrument shall be deemed to be the date of the execution by the grantor who last executes the instrument.

(3) The day on which the instrument is executed shall not be included in the period for registration ; but the instrument may be registered on that day.

Register book and index to be kept

7. (1) The Registrar shall cause every instrument registered in his office under this Ordinance to be numbered, and shall mark on each such instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose in his office the particulars of the instrument registered according to the form numbered (2) in the First Schedule hereto.

(2) The Registrar shall also keep an index of the names of grantors and grantees of instruments, and shall refer therein to the entries in the register book of the instruments given by each such grantor.

(3) Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

Local registration of abstracts of instruments.

(4) Where the instrument describes the residence of the person making or giving the same to be in some place outside the province in which the registry is situate or where the instrument describes the chattels enumerated therein as being in some place outside such province, the Registrar shall forthwith and within three clear days after registration in the registry, and in accordance with the prescribed directions transmit an abstract in the prescribed form of the contents of such instrument to the provincial commissioner in whose province such places are situate, and if such places are in more provinces than one to each such provincial commissioner. Every abstract so transmitted shall be filed, kept, and indexed by the provincial commissioner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of instruments registered by the Registrar.

Fee on registration.

8. There shall be paid to the Registrar upon the registration of every instrument the fee of five shillings.

Time for registration may be extended, and mistakes in register corrected.

9. The Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Ordinance, or according to the form or effect required by this Ordinance or that the omission or misstatement in the register or in any affidavit of the name, residence, or occupation of any person, or of any other matter, was accidental or due to inadvertence, may order such omission or misstatement to be rectified by extending the time for such registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence, or occupation, on such terms and conditions as it thinks fit.

RENEWAL OF REGISTRATION.

Registration to be renewed every five years.

10. (1) The registration of an instrument, whether executed before or after the coming into operation of this Ordinance shall, during the subsistence of such instrument, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration.

(2) If not so renewed, the registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required.

Mode of renewal.

(3) The registration of an instrument shall be renewed by filing in the office of the Registrar an affidavit in the form numbered (3) in the First Schedule hereto or to the like effect.

(4) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and renumber the instrument originally registered in the said office, or the filed copy thereof, with a similar number, and mark thereon the date of renewal of registration, and shall enter particulars of the instrument in the register book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefor in the register book.

Fee on renewal.

(5) There shall be paid to the Registrar upon the renewal of registration of any instrument the fee of five shillings.

(6) The provisions of sub-section (4) of section 7 of this Ordinance shall apply *mutatis mutandis* to the renewal of the registration of any instrument.

SEARCHES AND OFFICE COPIES.

Register book and instruments may be searched and viewed.

11. The register books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy thereof, may be searched and viewed by all persons during the office hours of the Registrar upon payment of a fee of two shillings for every search against any one person.

Office copies may be had.

12. Any person shall be entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy thereof registered as aforesaid, and an office copy of any affidavit filed under this Ordinance, on paying for the same at the rate of one shilling for every folio of one hundred words contained in such copy or extract; or if he makes such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify the same upon payment of a fee of ten shillings for each instrument or extract therefrom, and of fifty cents for every folio of one hundred words after the first ten folios.

EFFECT OF NON-REGISTRATION.

Unregistered instruments to be void in certain cases.

13. (1) Every instrument, unless registered in the manner hereinbefore provided, shall, upon the expiration of the time for registration, or if the time for registration is extended by the Supreme Court, then upon the expiration of such extended time, be deemed fraudulent and void as against—

(*a*) the official receiver or trustee in bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument;

(*b*) the assignee or trustee acting under any assignment for the benefit of the creditors of such person;

(*c*) any person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such process was issued;

so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of such bankruptcy, or of the execution by

the grantor of such assignment for the benefit of his creditors, or of the execution of such process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given, as the case may be.

(2) So long as an instrument continues to be registered hereunder, the chattels comprised in that instrument shall not be deemed to be in the possession, order, or disposition of the grantor, within the meaning of the Bankruptcy Ordinance, 1925. No. 1 of 1926.

14. No unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any *bonâ fide* purchaser or mortgagee for valuable consideration, or as against any person *bonâ fide* selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his business. Instrument not registered within time limited not to affect *bonâ fide* purchaser for value without notice.

AS TO INSTRUMENTS GENERALLY.

15. Sealing shall not be essential to the validity of any instrument; but every execution of an instrument shall be attested by at least one witness, who shall add to his signature his residence and occupation. Instrument to be attested.

16. Every instrument shall be deemed to be made on the day on which it is executed, and shall take effect from the time of its registration. Instrument to take effect from execution.

17. Every instrument shall contain or shall have endorsed thereon or annexed thereto, a schedule of the chattels comprised therein, and save as is otherwise expressly provided by this Ordinance, shall give a good title only to the chattels described in the said schedule, and shall be void as against the persons mentioned in sections 13 and 14 hereof in respect of any chattels not so described. Instrument to have inventory of chattels.

18. Save as is otherwise expressly provided by this Ordinance, an instrument shall be void as against the persons mentioned in sections 13 and 14 hereof in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument. Instrument void where grantor not owner of chattels.

Instrument subject to defeasance, etc., void in certain cases.

19. (1) If an instrument is made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration of trust shall for the purposes of this Ordinance be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall be void as against the persons mentioned in sections 13 and 14 hereof so far as regards the property in or right to the possession of any chattels comprised in or affected by such instrument.

(2) In the case of a document securing the payment of the moneys or any part thereof payable by virtue of an instrument it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto, and the nature of the security are set forth in the instrument or in some schedule thereto.

Saving.

20. Nothing in the three last preceding sections shall render an instrument void in respect of any of the following chattels, that is to say :—

(*a*) Stock, wool, and crops.

(*b*) Fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or on the schedule to, such instrument.

Saving of laws prescribing formalities as to execution of instruments or securing rights thereunder.

21. Nothing in this Ordinance shall be deemed to affect any law for the time being in force—

(*a*) prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Ordinance; or

(*b*) conferring or securing any rights or claims under or in respect of any such instrument.

FORM OF INSTRUMENTS.

Form of instrument by way of security.

22. (1) Every instrument under this Ordinance may be in the form number (4) in the First Schedule hereto or to the like effect with such variations or modifications thereof and additions thereto as are expressed in the instrument.

(2) An instrument securing an account current continues in full force and effect notwithstanding that the grantor may from time to time be in credit on such account.

Where successive securities are given over same chattels.

23. Where an instrument is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in such prior instrument, then if such subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, be void as against the persons mentioned in sections 13 and 14 hereof, unless it is proved to the Court having cognizance of the case that the subsequent instrument was *bonâ fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Ordinance.

INSTRUMENTS COMPRISING STOCK.

How stock to be described.

24. Where stock are comprised in any instrument they shall be described or referred to therein or in the schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise the instrument shall be void as against the persons mentioned in sections 13 and 14 hereof, so far as regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described or mentioned in such instrument or schedule.

Stock to include increase of stock, etc.

25. An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by the last preceding section, but also the natural increase of such stock, and all stock of the class or classes described in the instrument, the property of the grantor, branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument or in the schedule thereto, or any land and premises used and worked as part of the first-mentioned land and premises, whether or not such stock be

removed therefrom. The grantee shall have the same legal property and right in all stock which by force of this section are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule thereto.

ASSIGNMENT OF BOOK AND OTHER DEBTS.

Instrument may comprise book debts.

26. (1) Book or other debts shall be deemed to be chattels situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of six months next before the execution of the instrument.

(2) In every instrument comprising book or other debts each debt shall be deemed to be a separate chattel, and shall be described in the schedule thereto by setting forth the name of the debtor or firm of debtors and the amount of the debt, so far as is reasonably necessary to show by whom the debts are owing and every such instrument shall be void as against the persons mentioned in sections 13 and 14 of this Ordinance in respect of any debt not so described.

(3) Nothing in this section shall apply to any debt secured or charged on land.

(4) Nothing in this section shall apply to any floating security granted by a company registered under the Companies Ordinance, over the assets of such company, provided that such security is registered in the manner required by that Ordinance.

Cap. 93.

Assignments of moneys payable to suppliers of dairy produce.

27. (1) Nothing in the last preceding section shall apply to any deed or agreement in writing purporting to assign to or to authorise the grantee to receive any moneys due at the date thereof or thereafter from time to time to become due to the grantor for or in respect of any milk, cream, or butterfat, supplied by such grantor to any butter, cheese or other factory for the manufacture of dairy products.

(2) Such a deed or agreement is not an instrument to which this Ordinance applies.

SECURITIES OVER CROPS.

Security may be given over crops.

28. An instrument may be granted over the crops described or referred to therein or in the schedule thereto then actually sown or growing or planted or to be sown or grown or planted in or upon the lands mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops

therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown or on any other land or premises, or whether the nature of the crop has been altered by a process of curing or manufacture.

Saving of rights of landlord or mortgagee.

29. No such instrument shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument:

Provided that no such instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

SECURITIES OVER WOOL.

Security may be given over wool.

30. An instrument may be granted over the wool of the next ensuing clip to be shorn from the sheep described or referred to therein, or in the schedule thereto, then depasturing upon the lands mentioned therein or in such schedule, and shall entitle the grantee thereof to the wool of such sheep, not only while growing but afterwards when shorn from the sheep, and wherever such wool may be.

Wool securities not affected by sale, etc., of sheep.

31. No subsequent sale, mortgage, or other encumbrance of or affecting the sheep mentioned in any such instrument shall extinguish, suspend, impair, or prejudicially affect that instrument if duly registered, or the rights of the grantee thereof to the wool specified or referred to therein.

Security may be given over wool of mortgaged sheep.

32. The grantor of any instrument over sheep may, with the consent in writing of the grantee thereof, and so far as is authorised by such consent, but not otherwise, give to some third person a valid security on the next ensuing clip of the wool of such sheep.

Further provision as to security given over wool.

33. (1) If under any instrument comprising sheep, whether such instrument has been executed before or after the commencement of this Ordinance, the grantee thereof shall from time to time be entitled to require the grantor to execute and give to such grantee an instrument over the wool growing, or to grow, upon the sheep for the time being subject to such instrument, or be entitled to require the grantor to deliver to

the grantee the wool shorn from such sheep in each year during the continuance of such instrument, then and in such case the grantee shall, during the subsistence of the registration of such first-mentioned instrument, be deemed, notwithstanding the provisions of section 30 hereof, to possess a lien or security over each clip in the same degree and manner as if an instrument in respect of the wool had been actually executed by the grantor and registered under this Ordinance, and such lien or security shall have the consequences mentioned in section 31 hereof.

(2) In every instrument comprising sheep, executed after the commencement of this Ordinance, there shall be implied (unless such implication is expressly negatived) a covenant by the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument.

ENTRY OF SATISFACTION.

Memorandum of satisfaction may be filed.

34. (1) In the case of an instrument, upon the production to the Registrar of a memorandum of satisfaction in the form numbered (5) in the First Schedule hereto or to the like effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in such instrument or any specified part thereof from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and on production of such instrument and payment of a fee of five shillings, the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) The execution of such memorandum shall be attested by at least one witness, who shall add to his signature his residence and occupation, and shall be verified by the affidavit of that witness.

(3) The Registrar may, in his discretion, dispense with the production of the instrument on proof by affidavit to his satisfaction that the instrument has been destroyed, cannot be found, or cannot be produced.

Effect of filing such memorandum.

35. From and after the filing of any such memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee of the chattels expressed to be discharged shall

vest in the person for the time being entitled to the equity of redemption therein, but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

Public Trustee may sign memorandum in certain cases.

36. Where the grantee of an instrument by way of security is absent from the Colony, and there is no person in the Colony authorised to discharge the same on his behalf at or after the date appointed for the payment of the moneys secured by such instrument, the Public Trustee may receive such moneys in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of such person, and upon the filing thereof such memorandum, signed by the Public Trustee, shall be as effectual as a memorandum signed by the person entitled to such moneys.

Judge may order memorandum to be filed.

37. The Supreme Court may, upon application made for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument if it appears that the debt (if any) for which such instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order may be filed by the Registrar and entered in his book in like manner as if the same were a memorandum within the meaning of section 34 hereof.

SALES.

Sales by Registrar

38. Chattels under this Ordinance or any part thereof may be sold along with or separately from land (if any) mortgaged to secure payment of the same moneys as are secured by any instrument under this Ordinance.

SALE OF GRANTOR'S INTEREST.

Grantor's interest in chattels may be sold in execution of judgment against him.

39. (1) Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of any Court, and the said chattels, or any of them, are comprised in any instrument under this Ordinance, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title, and interest of the judgment-debtor in the same.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title, and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the said right, title, and interest, subject to payment of all moneys due under the instrument.

(4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title, and interest.

(5) If the grantee makes default herein, the purchaser may bring an action against him to recover the surplus, as money received to the use of the purchaser.

Not to affect interpleader process.

40. Nothing in the last preceding section shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process.

IMPLIED COVENANTS, ETC.

Covenants for title.

41. There shall be implied in every instrument the covenants for title on the part of the grantor set forth in the Second Schedule hereto, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

Covenants, etc., implied in instruments.

42. There shall be implied in every instrument the covenants, provisos, agreements, and powers set out in the Third Schedule hereto, or such of them as are applicable; and such implied covenants, provisos, agreements, and powers shall, subject to any modifications of the same expressed in the instrument, have the same effect as if the same were respectively set out therein at length.

Meaning of abbreviated expressions.

43. Such of the expressions defined in section 2 hereof or in the Fourth Schedule hereto as are used in any instrument, or in any of the covenants, provisos, agreements, or powers implied therein by this Ordinance, shall, unless the contrary is expressed in such instrument, or unless manifestly inconsistent with the context, have the meanings given to the same in the said section 2 or Fourth Schedule, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out therein.

Covenants to be several as well as joint.

44. Where there are two or more grantors or two or more grantees of any instrument, then any covenants, conditions, provisos, agreements, and powers expressed in such instrument, or implied therein by this Ordinance, and imposing an obligation on such grantors or grantees, or enuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

Covenants to bind executors.

45. Except in so far as the contrary intention appears, all covenants, conditions, provisos, agreements, and powers expressed in any instrument, or implied therein by this Ordinance, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements, and powers impose an obligation, and shall operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same enure.

Covenants may be negatived or varied.

46. All or any of the covenants, provisos, conditions, agreements, or powers set forth in the Second, Third and Fourth Schedules hereto may be negatived, modified, or altered, or others may be added to them, by express words in the instrument.

TRANSFERS OF INSTRUMENTS.

Form of transfer of instrument.

47. Every instrument may be transferred by a document in the form in the Fifth Schedule hereto or to the like effect, and every transferee, his executors, administrators, and assigns, shall, in respect of the instrument transferred, have the same rights, powers, and remedies, and be subject to the same obligations, as the transferor.

Registration of transfers.

48. Transfers of instruments may be registered at any time after the execution thereof in like manner as instruments are registered; and, in case two or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

PENAL.

Attempt to defraud grantee.

49. Every grantor of an instrument under this Ordinance who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the same or attempts so to do, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to six months' imprisonment or to a fine not exceeding one hundred pounds or to both such fine and imprisonment.

Repeal.

Cap. 22.

50. The Bills of Sale Act, 1878, and the Bills of Sale Act, 1882, as applied to the Colony, and the Bills of Sale Ordinance (Chapter 22 of the Revised Edition) are hereby repealed.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

(1) AFFIDAVIT ON REGISTRATION OF INSTRUMENT.

In the Supreme Court of Kenya. In the matter of the Chattels Transfer Ordinance, 1930.

I, [*full name of deponent*], of [*place of residence or business*], in the Colony of Kenya, [*occupation*], make oath and say as follows :—

1. The paper writing hereto annexed and marked " A " is a true copy of an instrument under the above-mentioned Ordinance, and of every schedule or inventory thereon endorsed or thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by [*full name of grantor*].

2. The said instrument was made and given by the said [*full name of grantor*] on the.....day of.....19....

3. I was present, and saw [*full name of grantor*] duly execute the said instrument on the.....day of..... 19..., at [*state place where instrument executed*].

4. The said [*full name of grantor*] resides at [*place of residence*], and is [*occupation*].

(This may be varied to describe residence at date of instrument.)

5. The name subscribed to the said instrument as that of the witness attesting the due execution thereof by the said [*name of grantor*] is in the proper handwriting of me, this deponent.

6. I am [*occupation*] and reside at [*place of residence*].

..... *E.F.*

Sworn at.....the.....day of.....19....

Before me..... *G.H.*

N.B.—If the grantor is absent from Kenya and executes the instrument by attorney, it shall be sufficient if the deponent states his belief as to the present address of the grantor. In the case of a company the registered office should be stated instead of the place of residence.

Where the original instrument is filed, the first paragraph of this affidavit should be struck out, and the second and third paragraphs will require some alterations.

(2) REGISTER BOOK.

No	By whom given			To whom given			Nature and Date of Instrument.	Date and time of Registration.	Date of Renewal.	Satisfaction entered.
	Name	Residence.	Occupation.	Name	Residence.	Occupation.				

(3) AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT.

In the Supreme Court of Kenya. In the matter of the Chattels Transfer Ordinance, 1930.

I, [*full name of deponent*], of [*place of residence or business*], in the Colony of Kenya, [*occupation*], make oath and say as follows :—

1. I am the grantee of the instrument registered under the above Ordinance, as No....., and made between [*state names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit*].

(If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, state such fact, and also state briefly how deponent has become acquainted with the facts deposed to.)

2. The said instrument was registered on the..... day of..... 19...

3. The registration of the said instrument was last renewed on the.....day of..... 19...

(This paragraph is inapplicable where registration of the instrument is being renewed for the first time.)

4. The said instrument is still subsisting, and in full force and effect.

..... *C.D.*

Sworn at.....this.....day of..... 19...

Before me..... *G.H.*

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(4) INSTRUMENT.

A.B., of [*state residence and occupation*], being owner of the chattels mentioned in the schedule hereto [*where a schedule is necessary*], in consideration of the sum of £..... lent and advanced to him by *C.D.*, of [*state residence and occupation*] [*or, if consideration not an advance of money, state any other consideration for which mortgage given*], does hereby

assign and transfer the same to the said *C.D.* by way of mortgage to secure the payment of the said sum of £..... on the.....day of..... 19..., with interest thereon in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of £..... per centum per annum by.....payments on the.....day of the months of.....and..... in each year. (Implied covenants, powers, and provisions may be varied or negatived).

In witness whereof *A.B.* has hereunto subscribed his name, this.....day of..... 19...

[*Schedule.*]

..... *A.B.*

Signed by the above-named *A.B.* in the presence of

..... *E.F.*
[*Residence and occupation.*]

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(5) MEMORANDUM OF SATISFACTION.

I, *C.D.*, hereby consent to a memorandum of satisfaction being written upon the instrument [*or registered copy of the instrument*] given for securing the sum of £....., bearing the date the.....day of..... 19... and made between.....and..... and registered on the.....day of.....19... as No.....under the Chattels Transfer Ordinance, 1930, the moneys for which such instrument was given as a security having been satisfied.

Dated this.....day of..... 19...

..... *C.D.*
(*Grantee or Assignee.*)

Witness .....*E.F.*
[*Residence and occupation.*]

SECOND SCHEDULE.

COVENANTS FOR TITLE.

1. That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned; and that they are free and clear from encumbrances other than such as are herein mentioned.

2. That the grantor will, at his own cost, do and execute all such acts, deeds, matters, and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee may from time to time be reasonably required.

THIRD SCHEDULE.

COVENANTS, PROVISOS AND POWERS IMPLIED IN INSTRUMENT.

1. That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the time herein mentioned, without any deduction whatever.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on his security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situate.

4. That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the like good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist with other chattels of a like nature; and

further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

Provisos and Agreements Implied in Instruments.

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition, or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until execution is levied against the goods of the grantor and such execution is not stayed or satisfied within ten days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

Powers Implied in Instruments.

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenanted to be paid on the day on which the same ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions or agreements herein expressed or implied, and on the grantor's part to be observed and performed, or if the grantor becomes bankrupt, or if at any time execution is levied against the goods of the grantor such execution is not stayed or satisfied within ten days, then and in such case the grantee, either personally or by his agent or servants may immediately thereupon

or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell or dispose of same or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase money, or to buy in the said chattels or any part thereof at such auction, and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at such sale for any of the purchase money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges, and expenses of and incidental to such taking possession, sale, and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor.

Powers, Covenants, and Provisions to be Implied in Instruments over Stock.

8. That during the continuance of this security, the grantee, his agents, or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises whereon the stock for the time being subject to this security are depasturing, for the purpose of viewing the state and condition of the same; and that the grantor will upon receiving seven

days previous notice in writing delivered to him personally or addressed to him through the ordinary course of post or otherwise at his last-known place of abode in the Colony, give, and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants, to view the same accordingly.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing, further encumber the stock for the time being subject to this security, or change the general quality, character, or description of the same or remove the same or any part thereof from the said lands or premises, sell the same or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark, and mark with the brand, earmark, and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brands, earmarks, and marks herein specified.

And will not without the leave in writing of the grantee, brand, earmark, or mark, or permit to be branded, earmarked, or marked, any stock for the time being subject to this security with any brands, earmarks, or marks, other than the brands, earmarks, or marks herein specified.

And will at all times during the continuance of this security take, use, and adopt all due and proper means for keeping and maintaining all stock now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: And will at all times during the continuance of this security pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock, and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in the said conduct and management: And will every year on demand by the grantee, render and deliver to him a return

or account in writing setting forth the number, ages, and sexes of the stock for the time being subject to this security and the places where the same are depasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations, and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned: And that the grantor will, at his own cost and charges, do and execute all such deeds, matters, and things as may be necessary, or as the grantee may think proper, for the further, better, and more perfectly assigning and assuring to the grantee the stock, and increase of stock, and all and singular other the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisos, agreements, and declarations as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: And will from time to time, and at all times during the continuance of this security, pay all and singular the fees and other outgoings and payments, and perform and observe all rules and regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable, or performable respectively: And that in case the grantor fails or neglects to pay such fees and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that the grantor will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such payment as aforesaid, with interest for the same after the rate of eight pounds per centum per annum from the time or respective times when the same were advanced or paid: And that in

the meantime, and until such sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal moneys secured by this instrument. That in case the grantee exercises any power of entry or taking possession vested in him hereunder, then he, or any person or persons appointed by him for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct, and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking, and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon after the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

Power to be Implied in Instruments over Crops.

11. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell the same in the Colony, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of the Colony, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or

deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in the Colony or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said crops, and all costs, mercantile, and other charges, and expenses incurred in and about the harvesting, sale, shipment and carrying away of such crops, and the storage and freight thereof, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

Power to be Implied in Instrument over Wool.

12. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the flock of sheep mentioned in this instrument, and the increase thereof, and all other sheep which if this instrument were an instrument by way of security over sheep would be included therein, shall be shorn either by the grantor, or by the grantee, at the option of the grantee, but in either case at the expense of the grantor, at the usual and proper season for so doing; and the wool of such sheep shall with all convenient speed be properly sorted and packed in good bales, marked with the proper brand of such wool, and shall be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell the same in the Colony, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of the Colony, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said wool or by any sale or sales thereof, whether in the Colony or elsewhere, or by the act, neglect or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that

he may be compelled to pay in order to protect his security over the said wool, and all costs, mercantile, and other charges and expenses incurred in and about the shearing of the said sheep, and the packing, carrying away, sale and shipment of the said wool, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

FOURTH SCHEDULE.

MEANING OF ABBREVIATED EXPRESSIONS.

1. The words " upon demand " mean upon demand being made by notice in writing, signed by the person entitled to make the demand, or any agent or clerk or servant of such person, served upon the person upon whom the demand is to be made, either personally or by posting the same in a duly registered letter addressed to him at his usual or last-known place of abode in the Colony.

2. The words " further advances " mean such further sum or sums of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such sums as may become owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

3. The words " will, upon demand, pay the balance due upon the account current between them " mean that the grantor will, on demand, pay to the grantee the balance on the account current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances as defined by the Chattels Transfer Ordinance, 1930, and for interest, commission, and other lawful charges from the day of such demand being made till the actual payment thereof at the rate mentioned in this instrument without any deduction; and it is hereby declared and agreed that the said account-current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year (or, if no such days are mentioned in the instrument, then on the 31st

day of March and the 30th day of September in each year), until the final balance of account is fully paid; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor to the grantee, notwithstanding that the current-account between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand as aforesaid, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

4. The words " will insure " mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature or kind capable of being insured against loss or damage by fire, such insurance to be effected in the name of the other party to this instrument and in some public insurance office to be approved of by him, and to be for the full amount herein specified (or, if no amount is specified then for the full insurable value of the said chattels); and will, at the request of the other party, hand over to and deposit with him the policy of every such insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under any such insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as the same extend, in making good such loss or damage (or, if the instrument is given by way of security, in discharging the moneys hereby secured, if such other party so elects):

Provided that, if default be made in the observance or performance of this covenant, such other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure such chattels, and may forthwith recover the costs and charges of such insurance from the party liable to insure in like manner as if the same had been advanced by way of loan on the security of this instrument.

5. The words " will brand, earmark, and mark " mean that the party liable to brand, earmark, and mark, will keep all the stock subject to this security at all times while this instrument remains in force distinctly branded, earmarked and marked with the brands, earmarks and marks specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party hereto to enter upon any lands or premises where any stock subject to this security are and to take possession of the same, and brand, earmark and mark the same with the brands, earmarks, and marks specified in this instrument, with the right to use all branding, earmarking, marking, and other implements and plant requisite therefor, and all costs, charges, and expenses occasioned to him by so doing shall be recoverable from the party liable to brand, earmark, and mark as if the same had been advanced by way of loan as a further advance on the security of this instrument.

FIFTH SCHEDULE.

TRANSFER OF INSTRUMENT.

I, *C.D.*, of [*state residence and occupation of transferor*], the grantee of the instrument registered in the office of the Registrar-General.....as No....., under the Chattels Transfer Ordinance, 1930, do in consideration of [*state consideration*], hereby transfer to *X.Y.*, of [*state residence and occupation of transferee*] all my rights, title, estate and interest in and to the chattels comprised in the said instrument.

As witness my hand this.....day of.....19...

..... *C.D.*

Signed by the said *C.D.* in the presence of

..... *E.F.*
(*Residence and occupation*).

No. 25 OF 1930

Date of assent. [17TH JULY, 1930.]

An Ordinance to Amend the Local Government (Rating) Ordinance, 1928.

Date of commencement. *17th July, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Local Government (Rating) (Amendment) Ordinance (No. 2), 1930 ", and shall be read as one with the Local Government (Rating) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance.

No. 20 of 1928.

Finality of notice fixing Mombasa rate for the year 1929. **2.** Notwithstanding anything contained in section 18 of the Principal Ordinance the notice appearing in the Official Gazette of 19th November, 1929, being General Notice No. 1570 of 19th November, 1929, and in the " Mombasa Times " of 20th November, 1929, purporting to fix the date when the rate imposed by the Mombasa Municipal (Interim) Board should become due and payable shall be deemed to be valid notice within the meaning of section 18 aforesaid and shall be deemed to fix the date when the said rate became due and payable and shall be binding on all parties concerned.

Finality of rate for 1929. **3.** The said rate declared by the said notice to be due and payable on the date so fixed shall, notwithstanding anything contained in the Principal Ordinance, be deemed to have accrued due and payable on the date so fixed, and shall be binding on all parties concerned, and shall not be liable to be contested by suit or otherwise.

Mombasa Valuation Roll declared final and binding. **4.** For the purpose of removing doubts it is hereby declared that the Mombasa Valuation Roll signed and certified by the President of the Valuation Court appointed by the Municipal Board of Mombasa on the 12th day of March, 1929,

is fixed and binding upon all parties concerned, notwithstanding anything contained in the Principal Ordinance or in any Ordinance amending the same, and no action contesting the said Roll shall be entertained by any Court in the Colony. Provided always that the said Roll shall be subject to the provisions of sub-section (1) of section 3 of the Principal Ordinance relating to the revaluation of rateable property within the Municipality of Mombasa.

No. 26 OF 1930.

Date of assent. [11TH AUGUST, 1930.]

An Ordinance to Amend the Explosives Ordinance, 1929.

Date of commencement. *11th August, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Explosives (Amendment) Ordinance, 1930," and shall be read as one with the Explosives Ordinance, 1929, hereinafter referred to as " the Principal Ordinance ".

No. 13 of 1929.

2. Any person dissatisfied by a decision of the Director under section 13, 16, 19 or 20 of the Principal Ordinance may appeal against such decision to the Governor, whose decision shall be final.

No. 27 OF 1930.

[11TH AUGUST, 1930.] Date of assent.

An Ordinance to Amend the Trout Protection Ordinance, 1928.

11th August, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Trout Protection (Amendment) Ordinance, 1930," and shall be read as one with the Trout Protection Ordinance, 1928, hereinafter referred to as " the Principal Ordinance ". Short title. No. 24 of 1928.

2. Section 10 of the Principal Ordinance is hereby repealed and the following substituted therefor :— Repeal and replacement of section 10 of the Principal Ordinance.

" 10. (1) The following Trout Fishing Licences may be granted by any licensing officer and the following fees shall be paid therefor, that is to sav :— Fees payable for licences.

Visitor's Licences.	Shs.	*Resident's Licences.*	Shs.
(*a*) Yearly	100	Yearly	25
(*b*) Fortnightly ...	40	Fortnightly	10
(*c*) Twenty-four hourly	10	Twenty-four hourly ...	3

(2) (*a*) A Visitor's Yearly Licence shall be in force for one year from the date of issue.

(*b*) A Resident's Yearly Licence shall be in force up to and including the thirty-first day of December in the year of issue.

(*c*) A Fortnightly Licence shall be in force for fourteen consecutive days from and including the day on which it is dated to commence by the licensing officer.

(*d*) A Twenty-four Hourly Licence shall be in force for twenty-four consecutive hours from and including the hour of the day on which it is dated to commence by the licensing officer.

Any person holding a visitor's yearly licence and becoming a bona fide resident while the licence is in force shall be entitled to a refund of seventy-five shillings.

(4) A fortnightly licence may be converted during the year of its issue into a yearly licence on payment of the difference between the fees for fortnightly and yearly licences.

(5) The Governor shall have power to remit the fee payable in respect of any licence under this Ordinance.

(6) In the event of any licensee losing his licence he may apply to the licensing officer who issued such licence for the issue of a duplicate licence, and a fee of two shillings shall be charged by such licensing officer for the issue of such duplicate licence."

No. 28 OF 1930.

[11TH AUGUST, 1930.] Date of assent.

An Ordinance to Repeal the Wattle Bark Industry Ordinance.

11th August, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Wattle Bark Industry (Repeal) Ordinance, 1930." Short title

2. The Wattle Bark Industry Ordinance (Chapter 150 of the Revised Edition of the Laws) is hereby repealed. *Cap.* 150.

No. XXIX. *Native Authority* **1930**

No. 29 OF 1930.

Date of assent. [11TH AUGUST, 1930.]

An Ordinance to Amend the Native Authority Ordinance.

Date of commencement. *11th August, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Native Authority (Amendment) Ordinance, 1930," and shall be read as one with the Native Authority Ordinance (Chapter 129 of the Revised Edition), hereinafter referred to as " the Principal Ordinance ".

Cap. 129.

Power to establish local communal councils. No. 5 of 1929.

2. The Governor in Council may establish a council in any area which has been declared to be a communal reserve under the provisions of the Crown Lands (Amendment) Ordinance, 1929, to be known as a local communal council, which shall be composed of the district commissioner and the district officer (if any) within whose district such communal reserve is situated together with such other persons representative of the inhabitants of such communal reserve as the Governor may appoint thereto :

Provided that before any person other than an official headman is so appointed the inhabitants of the area shall be given an opportunity to nominate any suitable persons, who may or may not be headmen, to represent their interests, and a complete list of persons so nominated shall be submitted to the Governor together with the recommendation of the district commissioner.

Application to local communal council of provisions of Principal Ordinance.

3. The provisions of sections 21 to 31 inclusive of the Principal Ordinance as from time to time amended shall apply, *mutatis mutandis*, to a local communal council established under this Ordinance.

No. 30 OF 1930.

[11TH AUGUST, 1930.] Date of assent.

An Ordinance to Supply a Further Sum of Money for the Service of the Year ended 31st December, 1929.

11th August, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the 1929 Supplementary Appropriation Ordinance, 1930." Short title.

2. The Public Revenue for the period 1st January to 31st December, 1929, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the period 1st January to 31st December, 1929, with a further sum of four hundred and fifteen thousand one hundred and ninety pounds three shillings and eighty-nine cents, in addition to the sums provided by the Appropriation Ordinance No. 9 of 1929. Public Revenue charged. No. 9 of 1929.

3. The money granted by this Ordinance shall be applied to the purpose and services expressed in the schedule annexed hereto. Application of money granted.

4. The Treasurer of the Colony and Protectorate of Kenya is hereby given authority for having paid out of the Revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the schedule, the said sum of four hundred and fifteen thousand one hundred and ninety pounds three shillings and eighty-nine cents, which have come in course of payment during the period 1st January to 31st December, 1929. Treasurer's authority for payment.

No. 31 OF 1930.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to Provide for the Establishment and Government of a Force styled the King's African Rifles and for matters incidental thereto.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " The King's African Rifles Ordinance, 1930." Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation of terms.

" Army Act " means the Imperial Statute 44 and 45 Vict., cap. 58, as amended from time to time, or any Imperial enactment substituted therefor;

" Administrative officer " means any official charged with the civil administration of a district;

" Battalion " or " unit " includes the Somaliland Camel Corps, the Supply and Transport Corps, the Northern Brigade Headquarters and the Northern Brigade Signal Section.

" Commanding officer " means the officer in command of a battalion, and in relation to any officer, British warrant or non-commissioned officer, native officer, non-commissioned officer, or soldier, means the officer in command of the battalion to which such officer, British warrant or non-commissioned officer, native officer, non-commissioned officer, or soldier belongs;

" Enemy " includes all armed mutineers, armed rebels, armed rioters, and pirates;

" Enlisted or enrolled follower " means any other person who is enlisted for a term of service;

" Follower " means any person, not being of European origin or extraction, who is attached to the regiment in any capacity, and includes any such person being of the family of

" Superior officer," when used in relation to a British warrant or non-commissioned officer, a native officer, a soldier or follower, includes all officers, British warrant or non-commissioned officers, or non-commissioned officers superior to such British warrant or non-commissioned officer, native officer, soldier or follower; when used in relation to machine and Lewis gun porters, stretcher bearers, and syces, includes a headman.

Division of Ordinance.

3. This Ordinance is divided into six parts relating to the following subject-matters, that is to say :—

Part I. Constitution and Duties.
Part II. Discipline.
Part III. Government.
Part IV. Enlistment, Discharge, and Service.
Part V. General Provisions.
Part VI. Application of Military Law and Miscellaneous Provisions.

PART I.—CONSTITUTION AND DUTIES.

Establishment of King's African Rifles.

4. (1) There shall be established and maintained in the Colony one or more battalion or battalions of troops forming part of a regiment of His Majesty's Forces styled the King's African Rifles, hereinafter called " the regiment."

(2) Where two or more battalions are established and maintained in the Colony they shall form a brigade.

(3) The regiment shall be charged with the defence of the Colony, the Uganda Protectorate, the Nyasaland Protectorate, the British Somaliland Protectorate, and the Tanganyika Territory, with the maintenance of order, and with such other duties as may be from time to time defined by the Governor of any East African Colony, Protectorate or Territory within which any portion of the regiment may from time to time be stationed.

Employment beyond Colony.

(4) The Governor may at any time and for any purpose, as the Secretary of State may direct, order that a battalion or any part thereof which may be stationed in the Colony shall be employed out of or beyond the Colony.

(5) The Governor may, on the recommendation of the officer commanding the troops, order that any native officer, non-commissioned officer, or private of the regiment shall proceed to the United Kingdom for the purpose of undergoing instruction or training or for other duty or employment.

duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same;

(4) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy;

(5) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency;

(6) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences punishable more severely on active service than at other times

7. (1) Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(*a*) Leaves his commanding officer to go in search of plunder;

(*b*) Without orders from his superior officer, leaves his guard, piquet, patrol or post;

(*c*) Forces a safeguard;

(*d*) Forces or strikes a soldier when acting as sentinel;

(*e*) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost-marshal, or when called on refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any other officer, non-commissioned officer, or other person;

(*f*) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving;

(*g*) Breaks into any house or other place in search of plunder;

(*h*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field or elsewhere;

(*i*) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive

No. 30 OF 1930.

[11TH AUGUST, 1930.] Date of assent.

An Ordinance to Supply a Further Sum of Money for the Service of the Year ended 31st December, 1929.

11th August, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the 1929 Supplementary Appropriation Ordinance, 1930." Short title.

2. The Public Revenue for the period 1st January to 31st December, 1929, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the period 1st January to 31st December, 1929, with a further sum of four hundred and fifteen thousand one hundred and ninety pounds three shillings and eighty-nine cents, in addition to the sums provided by the Appropriation Ordinance No. 9 of 1929. Public Revenue charged. No. 9 of 1929.

3. The money granted by this Ordinance shall be applied to the purpose and services expressed in the schedule annexed hereto. Application of money granted.

4. The Treasurer of the Colony and Protectorate of Kenya is hereby given authority for having paid out of the Revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the schedule, the said sum of four hundred and fifteen thousand one hundred and ninety pounds three shillings and eighty-nine cents, which have come in course of payment during the period 1st January to 31st December, 1929. Treasurer's authority for payment.

SCHEDULE.

No. of Head.		£	S.	Cts.
III	Pensions and Gratuities	4,444	12	82
VIIIa	Administration, Extraordinary ...	3,524	9	39
XV	Legal Department	145	14	30
XVII	Prisons	2,363	2	94
XIXa	Education, Extraordinary ...	1,584	6	91
XXa	Military, Extraordinary	14,193	11	97
XXI	Post Office and Telegraphs, Extraordinary	4,276	10	90
XXIIa	Agricultural Department, Extraordinary	67,233	6	53
XXIII	Forest Department	681	18	42
XXIV	Game Department	491	9	34
XXVIIa	Local Government—Contribution to Local Authorities, Extraordinary	14,006	14	99
XXVIIIa	Miscellaneous Services, Extraordinary	126,915	12	98
XXXI	Public Works Recurrent	12,899	8	00
XXXII	Public Works Extraordinary ...	162,429	4	40
		£415,190	3	89

No. 31 OF 1930.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to Provide for the Establishment and Government of a Force styled the King's African Rifles and for matters incidental thereto.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " The King's African Rifles Ordinance, 1930." Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation of terms.

" Army Act " means the Imperial Statute 44 and 45 Vict., cap. 58, as amended from time to time, or any Imperial enactment substituted therefor;

" Administrative officer " means any official charged with the civil administration of a district;

" Battalion " or " unit " includes the Somaliland Camel Corps, the Supply and Transport Corps, the Northern Brigade Headquarters and the Northern Brigade Signal Section.

" Commanding officer " means the officer in command of a battalion, and in relation to any officer, British warrant or non-commissioned officer, native officer, non-commissioned officer, or soldier, means the officer in command of the battalion to which such officer, British warrant or non-commissioned officer, native officer, non-commissioned officer, or soldier belongs;

" Enemy " includes all armed mutineers, armed rebels, armed rioters, and pirates;

" Enlisted or enrolled follower " means any other person who is enlisted for a term of service;

" Follower " means any person, not being of European origin or extraction, who is attached to the regiment in any capacity, and includes any such person being of the family of

a native officer or soldier, or being an officer's servant, syce, employee in canteen, sutler supplying the regiment or being in the lines;

" Governor " includes any officer administering the government of any East African Colony, Protectorate or Territory;

" Imprisonment " means imprisonment with hard labour unless the court imposing such imprisonment shall otherwise order. Imprisonment, where no maximum or minimum term is stated, shall be for any term not exceeding two years.

" Inspector-General " means the Inspector-General of the King's African Rifles.

" Military decoration " means any medal, clasp, good-conduct badge, or decoration;

" Military reward " means any gratuity for long service or good conduct; it also includes any good-conduct pay or any other military pecuniary reward;

" Native officer " means any officer other than European above the rank of native regimental sergeant-major;

" Non-commissioned officer " includes an acting non-commissioned officer and a schoolmaster and an enlisted clerk, but does not include British warrant and non-commissioned officers;

" Officer " means an officer commissioned or in pay as an officer in His Majesty's Imperial, Colonial, or Protectorate forces, or any arm, branch, or part thereof. Warrant and other officers holding honorary commissions are officers within the meaning of this Ordinance;

" Officer commanding the troops " means the senior military officer in command of His Majesty's Forces within the Colony.

" Reserve " means the reserve established under the King's African Rifles Reserve Forces Ordinance.

Cap. 41. " Soldier " does not include an officer, British warrant or non-commissioned officer or native officer, but otherwise includes every person subject to this Ordinance during the time that he is so subject, including machine and Lewis gun porters, stretcher bearers, hospital dressers, syces, sweepers, and any other persons who have been enlisted or enrolled for any period;

" Superior officer," when used in relation to a British warrant or non-commissioned officer, a native officer, a soldier or follower, includes all officers, British warrant or non-commissioned officers, or non-commissioned officers superior to such British warrant or non-commissioned officer, native officer, soldier or follower; when used in relation to machine and Lewis gun porters, stretcher bearers, and syces, includes a headman.

Division of Ordinance.

3. This Ordinance is divided into six parts relating to the following subject-matters, that is to say :—

Part I. Constitution and Duties.
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PART I.—CONSTITUTION AND DUTIES.

Establishment of King's African Rifles.

4. (1) There shall be established and maintained in the Colony one or more battalion or battalions of troops forming part of a regiment of His Majesty's Forces styled the King's African Rifles, hereinafter called " the regiment."

(2) Where two or more battalions are established and maintained in the Colony they shall form a brigade.

(3) The regiment shall be charged with the defence of the Colony, the Uganda Protectorate, the Nyasaland Protectorate, the British Somaliland Protectorate, and the Tanganyika Territory, with the maintenance of order, and with such other duties as may be from time to time defined by the Governor of any East African Colony, Protectorate or Territory within which any portion of the regiment may from time to time be stationed.

Employment beyond Colony.

(4) The Governor may at any time and for any purpose, as the Secretary of State may direct, order that a battalion or any part thereof which may be stationed in the Colony shall be employed out of or beyond the Colony.

(5) The Governor may, on the recommendation of the officer commanding the troops, order that any native officer, non-commissioned officer, or private of the regiment shall proceed to the United Kingdom for the purpose of undergoing instruction or training or for other duty or employment.

PART II.—DISCIPLINE.

CRIMES AND PUNISHMENTS.

Offences in respect of Military Service.

Offences in relation to the enemy, punishable with death.

5. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any Governor, commanding officer or other person shamefully to abandon or deliver up any garrison, place, post, or guard which it was the duty of such Governor, officer or person to defend;

(2) Shamefully casts away his arms, ammunition or tools in the presence of the enemy;

(3) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy;

(4) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner;

(5) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy;

(6) Knowingly does when on active service any act calculated to imperil the success of His Majesty's Forces or any part thereof;

(7) Misbehaves or induces others to misbehave before the enemy in such a manner as to show cowardice,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Ordinance mentioned.

Offences in relation to the enemy not punishable with death.

6. Every person subject to this Ordinance who on active service commits any of the following offences, that is to say :—

(1) Without orders from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear;

(2) Without orders from his superior officer wilfully destroys or damages any property;

(3) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of

duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same;

(4) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy;

(5) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency;

(6) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences punishable more severely on active service than at other times

7. (1) Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(*a*) Leaves his commanding officer to go in search of plunder;

(*b*) Without orders from his superior officer, leaves his guard, piquet, patrol or post;

(*c*) Forces a safeguard;

(*d*) Forces or strikes a soldier when acting as sentinel;

(*e*) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost-marshal, or when called on refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any other officer, non-commissioned officer, or other person;

(*f*) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving;

(*g*) Breaks into any house or other place in search of plunder;

(*h*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field or elsewhere;

(*i*) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive

it, or treacherously gives a parole, watchword, or countersign different from what he received;

(*j*) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect;

(*k*) Being a soldier acting as sentinel, commits any of the following offences, that is to say :—

(i) Sleeps or is drunk at his post, or

(ii) Leaves his post before he is regularly relieved,

shall on conviction by court-martial, if he commits any such offences on active service, be liable to suffer death or such less punishment as is in this Ordinance mentioned, and, if he commits any such offence not on active service, be liable to imprisonment, or such less punishment as is in this Ordinance mentioned.

(2) Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(*a*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever negligently occasions false alarms in action, on the march, in the field or elsewhere;

(*b*) Makes known the parole, watchword or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Mutiny and Insubordination.

Mutiny and sedition.

8. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to His Majesty;

(2) Endeavours to seduce any person from allegiance to His Majesty, or to persuade any person to join in any mutiny or sedition;

(3) Joins in or, being present, does not use his utmost endeavours to suppress any mutiny or sedition;

(4) Knowing of any actual or intended mutiny or sedition does not without delay inform his commanding officer or other superior officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Ordinance mentioned.

Striking or threatening a superior officer.

9. Every person subject to this Ordinance—

(1) who strikes or uses or offers any violence to his superior officer, being in the execution of his office,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Ordinance mentioned;

(2) who strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,

shall on conviction by court-martial, if he commits such offence on active service, be liable to imprisonment for a term not less than three years or such less punishment as is in this Ordinance contained; and if he commits such offence not on active service, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Disobedience to superior officer.

10. (1) Every person subject to this Ordinance who disobeys, in such manner as to show a wilful defiance of authority, any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Ordinance mentioned.

(2) Every person subject to this Ordinance who disobeys any lawful command given by his superior officer, shall on conviction by court-martial, if he commits such offence on active service, be liable to imprisonment for a term not less than three years, or such less punishment as is in this Ordinance mentioned; and, if he commits such offence not on active service, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Insubordination.

11. Every person subject to this Ordinance who commits any of the following offences, that is to say:—

(1) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him to effect an arrest, or strikes, or uses or offers violence to, any such officer;

(2) Strikes, or uses or offers violence to, any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer;

(3) Resists an escort whose duty it is to apprehend him or to have him in charge;

(4) Breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Neglect to obey garrison or other orders.

12. Every person subject to this Ordinance who neglects to obey any general or garrison or other orders, shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Desertion, Fraudulent Enlistment and Absence Without Leave.

Desertion.

13. (1) Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(*a*) Deserts or attempts to desert His Majesty's service;

(*b*) Persuades, endeavours to persuade, procures, or attempts to procure any person subject to this Ordinance to desert from His Majesty's service,

shall on conviction by court-martial, if he committed such offence on active service or under orders for active service, suffer death, or such less punishment as is in this Ordinance mentioned; and if he committed such offence under other circumstances be liable for the first offence to imprisonment or such less punishment as is in this Ordinance mentioned; and for the second or any subsequent offence, to imprisonment for a term not exceeding five years or such less punishment as is in this Ordinance mentioned.

(2) When any offender has fraudulently enlisted once or oftener he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful, on conviction of a person for

two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3) For the purpose of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

Fraudulent enlistment.

14. (1) Every person subject to this Ordinance who when belonging to any of His Majesty's Imperial or Colonial forces, without having first obtained a regular discharge therefrom, or otherwise fulfilled the condition enabling him to enlist, enlists in any other of His Majesty's Imperial or Colonial Forces shall be deemed to have been guilty of fraudulent enlistment and shall, on conviction by court-martial, be liable :—

(i) For the first offence to imprisonment or such less punishment as is in this Ordinance mentioned; and

(ii) For the second or any subsequent offence to imprisonment for a term not exceeding five years, or such less punishment as is in this Ordinance mentioned.

(2) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and, if he be convicted thereof, to punish him accordingly; and further it shall be lawful, on conviction of a person for two or more offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert, His Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent

enlistment, shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

Assistance of or connivance at desertion.

15. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Assists any person subject to this Ordinance to desert His Majesty's service;

(2) Being cognisant of any desertion or intended desertion of a person subject to this Ordinance does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter, or intended deserter, to be apprehended,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordiannce mentioned.

Absence from duty without leave.

16. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Absents himself without leave;

(2) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks;

(3) When in camp or garrison, or elsewhere, is found beyond the limits fixed or in any place prohibited by any general, garrison, or other order, without a pass or written leave from his commanding officer;

(4) Without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Disgraceful Conduct.

Extortion.

17. Every person subject to this Ordinance who commits or connives at any extortion, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Fraud by persons in charge of money or goods.

18. Every person subject to this Ordinance who being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement

thereof, or wilfully damages any such goods, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Disgraceful conduct.

19. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Malingers, or feigns or produces disease or infirmity;

(2) Wilfully maims or injures himself or any other soldier whether at the instance of such soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service;

(3) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity or delays cure;

(4) Steals, or embezzles, or receives knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods;

(5) Is guilty of any offence of a fraudulent nature not before in this Ordinance particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Drunkenness.

Drunkenness.

20. Every person subject to this Ordinance who commits the offence of drunkenness, whether on duty or not on duty, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned, and either in addition to or in substitution for any other punishment to pay a fine not exceeding one pound.

Offences in Relation to Prisoners.

Permitting escape of person in custody.

21. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) When in command of a guard, piquet, patrol or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge;

(2) Wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,

shall, on conviction by court-martial, be liable, if he has acted wilfully, to imprisonment with hard labour or such less punishment as is in this Ordinance mentioned, and in any other case to imprisonment without hard labour or such less punishment as is in this Ordinance mentioned.

Irregular arrest or confinement.

22. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Unnecessarily detains a person in arrest or confinement without bringing him to trial or fails to bring his case before the proper authority for investigation;

(2) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or, if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied by any account he may have received,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Escape from confinement.

23. Every person subject to this Ordinance who, being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as in this Ordinance mentioned.

Offences in Relation to Property.

Corrupt dealing in respect of supplies to forces.

24. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Without proper authority exacts from any person carriage, porterage, or provisions;

(2) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Deficiency in and injury to equipment.

25. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Makes away with, or is concerned in making away with his arms, ammunition, equipment, instruments, clothing, regimental necessaries, or any animal of which he has charge;

(2) Loses by neglect anything before in this section mentioned;

(3) Makes away with any military decoration granted to him;

(4) Wilfully injures anything before in this section mentioned or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institute, or any public property;

(5) Ill-treats any animal used in the public service,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences in Relation to False Documents and Statements.

Falsifying official documents and false declarations.

26. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes or is privy to the making of any false or fraudulent statement, or knowingly makes or is privy to the making of any omission with intent to defraud;

(2) Knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters, or makes away with any document which it is his duty to preserve or produce;

(3) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Neglect to report and signing in blank.

27. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) When signing any document relating to pay, arms, ammunition, equipment, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves blank any material part for which his signature is a voucher;

(2) Refuses, or by culpable negligence omits, to make or send a report or return which it is his duty to make or send,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

False accusation or statement by soldier.

28. Every person subject to this Ordinance who commits any of the following offences, that is to say,

(1) Being a soldier, makes a false accusation against any officer or soldier, knowing such accusation to be false ;

(2) Being a soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of any officer or soldier, or knowingly or wilfully suppresses any material facts ;

(3) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or fraudulent enlistment, or has served in and been discharged from any of His Majesty's Imperial or Colonial Forces ;

(4) Being a soldier, makes a wilfully false statement to any military or civil officer in respect of the prolongation of furlough,

shall be liable on conviction by court-martial to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences in Relation to Courts-Martial.

Offences in relation to courts-martial.

29. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending;

(2) Refuses to take an oath or make a solemn declaration or affirmation legally required by a court-martial to be taken or made;

(3) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him;

(4) Refuses, when a witness, to answer any question to which a court-martial may legally require an answer;

(5) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall, on conviction by court-martial other than the court in relation to or before whom the offence was committed, be liable to imprisonment or such less punishment as is in this Ordinance mentioned :

Provided that where a person subject to this Ordinance is guilty of contempt of a court-martial by using threatening or insulting language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may, by order under the hand of the president, sentence the offender to imprisonment for a period not exceeding twenty-one days.

False evidence.

30. Every person subject to this Ordinance who, when examined on oath or solemn declaration or affirmation before a court-martial, or any court or officer authorised by this Ordinance (or by the Army Act) to administer an oath, wilfully gives false evidence, shall be liable on conviction by court-martial to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences in Relation to Billeting.

Offences in relation to quarters.

31. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Wilfully demands from any person, quarters or accommodation of any sort to which he is not entitled;

(2) Is guilty of any ill-treatment, by violence, extortion, or making disturbance, of the occupier of any house in which any person or animal is billeted,

shall be liable on conviction by court-martial to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences in Relation to the Impressment of Carriages, Etc.

Offences in relation to the impressment of transport.

32. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Wilfully demands any carriages, animals, vessels, or other form of transport which are not actually required;

(2) Does not discharge as speedily as practicable any carriage, animal, vessel, or other form of transport;

(3) Ill-treats any animal or person performing transport duties;

(4) Uses or offers any menace to or compulsion on any person to make him provide any carriage, animal, vessel, or other form of transport which he is not bound to provide,

shall be liable on conviction by court-martial to imprisonment or such less punishment as is in this Ordinance mentioned.

Offences in Relation to Enlistment.

Enlistment of soldier discharged with ignominy or disgrace

33. (1) Every person subject to this Ordinance who having been discharged with disgrace from any part of His Majesty's Imperial or Colonial Forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted without declaring the circumstances of his discharge or dismissal, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

(2) For the purpose of this section, the expression " discharged with disgrace from any part of His Majesty's Forces " means discharged with ignominy, discharged as incorrigible and worthless, discharged for misconduct, or discharged on account of conviction for felony or of a sentence of penal servitude or rigorous imprisonment.

False answers or declarations on enlistment.

34. Every person having become subject to this Ordinance who is discovered to have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the person before whom he appears for the purpose of being attested shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

General offences in relation to enlisting.

35. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Is concerned in the enlistment of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Ordinance;

(2) Wilfully contravenes any enactments or regulations in any matter relating to the enlistment of soldiers,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Miscellaneous Military Offences.

Traitorous words.

36. Every person subject to this Ordinance who uses traitorous or disloyal words regarding the Sovereign, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Injurious disclosures

37. Every person subject to this Ordinance who whether serving with any of His Majesty's Forces or not, without due authority, either verbally or in writing, or by signal or otherwise, discloses the numbers or positions of any forces, or any magazines or stores thereof, or any preparations for or orders relating to operations or movements of any force, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Ill-treating soldier.

38. Every non-commissioned officer who commits any of the following offences, that is to say :—

(1) Strikes or otherwise ill-treats any soldier;

(2) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Duelling and attempting to commit suicide.

39. Every person subject to this Ordinance who commits any of the following offences, that is to say :—

(1) Fights, or promotes, or is concerned in or connives at fighting, a duel;

(2) Attempts to commit suicide,

shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Refusal to deliver to civil power soldiers accused of civil offences.

40. Every person subject to this Ordinance who, on application being made to him, neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

Conduct to prejudice of military discipline.

41. Every person subject to this Ordinance who is guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline, shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned :

Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Ordinance, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention.

Offences Punishable by Ordinary Law.

Offences punishable by ordinary law.

42. Subject to the provisions of this Ordinance relating to the jurisdiction of the civil courts, every person who, while he is subject to this Ordinance, shall commit any of the offences

in this section mentioned, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence (in this Ordinance referred to as a civil offence), shall be liable to be tried by court-martial, and on conviction to be punished as follows, that is to say :—

(1) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Ordinance mentioned;

(2) If he is convicted of murder, be liable to suffer death;

(3) If he is convicted of manslaughter or treason-felony, be liable to imprisonment for life or such less punishment as is in this Ordinance mentioned;

(4) If he is convicted of rape, be liable to suffer death, or such less punishment as is in this Ordinance mentioned :

Provided as follows :—

(*a*) A person subject to this Ordinance shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in any place within His Majesty's Dominions, or in a British Protectorate or in a Territory the mandate for which is being exercised by the Government of some part of His Majesty's Dominions, unless such person at the time he committed the offence was on active service, or such place is more than sixty miles as measured in a straight line from any place in which the offender can be tried for such offence by a competent civil court.

(*b*) A person subject to this Ordinance may be tried by a competent civil court for any offence for which he would be triable if he were not subject to this Ordinance.

Mode of complaint by soldier.

43. If any soldier thinks himself wronged in any matter by any officer other than his company commander or by any British warrant officer or non-commissioned officer or by a native officer or soldier, he may complain thereof to his company commander, and if he thinks himself wronged by his company commander, either in respect of his complaint not being redressed or in respect of any other matter, he may

complain thereof to his commanding officer; and if he thinks himself wronged by his commanding officer either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the officer commanding troops, and if he thinks himself wronged by the officer commanding troops, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the Governor; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Scale of punishments by court-martial.

44. Punishment may be inflicted in respect of offences committed by persons subject to this Ordinance and convicted by court-martial according to the scale following :—

(*a*) Death.

(*b*) Imprisonment for life or for any lesser period.

(*c*) Discharge with ignominy from His Majesty's service.

(*d*) Reduction in the case of a non-commissioned officer to a lower grade, or to the ranks.

(*e*) Corporal punishment not exceeding twenty strokes in lieu of, or in addition to, other punishment under this section.

(*f*) Forfeitures, fines and stoppages.

(*g*) In the case of a non-commissioned officer, reprimand or severe reprimand.

Provided that :—

(1) Where in respect of any offence under this Ordinance there is specified a particular punishment, or such less punishment as is in this Ordinance mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other provisions of this Ordinance as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

(2) A non-commissioned officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.

(3) An offender when sentenced to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service.

(4) In addition to or without any other punishment in respect of any offence, an offender convicted may be subject to forfeiture of any service towards gratuity, military decoration, or military reward.

(5) In addition to or without any other punishment in respect of any offence, an offender may be sentenced to any deduction authorised by this Ordinance to be made from his ordinary pay.

(6) The Governor shall, by regulation, prescribe the instrument with which corporal punishment under this section shall be inflicted.

(7) Unless the offender be on active service, corporal punishment shall not be awarded except for offences committed on the line of march against the persons or property of inhabitants of the country.

(8) Where a soldier on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment as may be directed by rules to be made from time to time by the Governor, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb.

(9) For the purpose of commutation of punishment the field punishments above mentioned shall be deemed to stand in the scale of punishment next below imprisonment.

Arrest.

Arrest.

45. The following regulations shall be enacted with respect to persons subject to this Ordinance when charged with offences punishable under this Ordinance :—

(1) Every person subject to this Ordinance when so charged may be taken into military custody :

Provided that in every case where any offender remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every fourteen days until a court-martial is assembled or the offender is released from custody.

(2) Military custody means, according to the usages of His Majesty's service, the putting the offender under arrest or the putting him in confinement.

(3) An officer, British warrant or non-commissioned officer or native officer may order into military custody any native officer or soldier of the regiment or any follower, and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm or branch of the service.

(4) An officer, British warrant or non-commissioned officer, native officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer, British warrant or non-commissioned officer, native officer, or non-commissioned officer, but it shall be the duty of the officer, British warrant or non-commissioned officer, native officer, or non-commissioned officer who commits any person into custody to deliver at the time of such committal or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, British warrant or non-commissioned officer, native officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account either verbal or in writing of the offence with which the person so committed is charged.

(5) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority, and,

as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

Powers of Commanding Officer.

Power of commanding officer.

46. The commanding officer shall, upon an investigation being had of a charge made against a person subject to this Ordinance of having committed an offence under this Ordinance, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with; but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to a court-martial or in the case of a soldier or a follower he may deal with the case summarily.

Where he deals with the case summarily—

(1) If the offender is a soldier not being a non-commissioned officer, the commanding officer may,

A.—Save in the case of absence without leave or of drunkenness, impose on the offender any one or more of the following punishments :—

(*a*) Award to the offender imprisonment for any period not exceeding forty-two days;

(*b*) Dismiss the offender from the regiment;

(*c*) Impose a fine not exceeding twenty-one days' pay, to be levied by stoppages from the offender's pay;

(*d*) Order the offender to suffer any deduction from his ordinary pay to make good the amount of any loss or damage he may have caused;

(*e*) Order confinement to barracks for any period not exceeding twenty-eight days, such confinement involving the taking of all duties in regular turn, attending parades and punishment drills, not exceeding one hour at a time nor four hours in all on the same day, inclusive of ordinary parades, and also liability to employment on duties of fatigue;

(*f*) Order extra guards and piquets, but only for minor offences or irregularities when on or parading for guard or piquet;

(*g*) Award corporal punishment not exceeding twenty strokes in lieu of or in addition to other punishment under this section, provided that, unless the offender be on active service, corporal punishment shall not be awarded except for offences committed on the line of march against the persons or property of the inhabitants of the country; and provided further that each case in which corporal punishment is awarded shall be reported at the time by the officer commanding the troops to the Governor with a statement of the circumstances;

(*h*) On active service award field punishment within the meaning of section 44 (8) of this Ordinance for any period not exceeding twenty-eight days;

(*i*) On active service, in addition to, or without any other punishment, order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days—

B.—In the case of absence without leave by a soldier not being a non-commissioned officer, the commanding officer may deal with the case summarily, and may award imprisonment, of either description, up to any period not exceeding forty-two days or confinement to barracks, provided that the term of imprisonment awarded, if exceeding seven days, shall not exceed the term of absence.

A soldier not being a non-commissioned officer shall also forfeit one days' pay for every day of absence in the same way as is laid down in the Royal Warrant for Pay for the Army—

Punishments for drunkenness.

C.—The offence of drunkenness by a soldier not being a non-commissioned officer may be dealt with and summarily punished by the commanding officer as follows:—

(*a*) For the first offence the offender shall be admonished or confined to barracks, but no fine shall be inflicted;

(*b*) For the second and every subsequent offence as follows:—

If within three months of the previous offence, by fine to the amount of nine days' pay with or without confinement to barracks;

If over three months and within six months of the previous offence, by fine to the amount of six days' pay with or without confinement to barracks;

If over six months and within nine months of the previous offence, by fine to the amount of three days' pay with or without confinement to barracks;

If over nine months of the previous offence, by admonition or confinement to barracks;

Such fines to be levied by stoppages from the offender's pay.

(*c*) Where a soldier not being a non-commissioned officer is liable to a fine, and four preceding instances of drunkenness have been recorded against him within the previous twelve months, an amount of three days' pay shall be added to the amount of the fine laid down;

(*d*) For an act of drunkenness on duty, as defined by section 20, or when an act of drunkenness is accompanied by any other offence, the offender may be sentenced, as provided by sub-section (1) of this section to imprisonment or confinement to barracks in addition to the fine.

(2) A.—If the offender is a native officer, warrant or non-commissioned officer, the commanding officer may impose on the offender any one or more of the following punishments, that is to say, he may :—

(*a*) Reprimand, severely reprimand, or reduce any native officer, warrant or non-commissioned officer to a lower rank or to the ranks;

(*b*) Dismiss the offender from the regiment;

(*c*) Impose a fine not exceeding twenty-one days' pay, to be levied by stoppages from the offender's pay;

(*d*) Order the offender to suffer any deduction from his ordinary pay to make good the amount of any loss or damage he may have caused.—

B.—A native officer, warrant or non-commissioned officer shall also forfeit one day's pay for every day of

absence without leave in the same way as is laid down in the Royal Warrant for Pay for the Army.—

C.—A native officer, warrant or non-commissioned officer convicted of drunkenness may be fined as laid down in sub-section (1) C of this section in addition to any of the punishments laid down in sub-section (2) A of this section.

(3) If the offender is a follower, the commanding officer may, for an offence under this Ordinance :—

Award to the offender any one or more punishments described in clauses (*a*), (*b*), (*d*) or (*g*) of part A of sub-section (1) of this section ; and in addition to or without any other punishment, impose a fine not exceeding twenty shillings.

Powers of Officer Commanding a Detachment.

Punishments which officers commanding detachments, etc., may award.

47. Any officer commanding a detachment, or the Administrative Officer resident at and in charge of any station where there is a detachment but no officer of the regiment, may examine into the truth of any charge against a soldier or follower, and if his decision is against the accused, he may impose on him any one or more of the following punishments :—

(1) If a soldier not being a non-commissioned officer, save in the case of absence without leave or of drunkenness :—

(*a*) Imprisonment for any period not exceeding fourteen days ;

(*b*) Fine not exceeding ten days' pay, to be levied by stoppages from the offender's pay ;

(*c*) Confinement to barracks for any period not exceeding twenty-one days, such confinement involving the taking of all duties in regular turn, attending parades and punishment drills, not exceeding one hour at a time, nor four hours in all on the same day, inclusive of ordinary parades, and also liability to employment on duties of fatigue ;

(*d*) In addition to or without any other punishment, deduction from ordinary pay to make good the amount of any loss or damage he may have caused;

(*e*) Extra guards and piquets, but only for minor offences or irregularities when on or parading for guard or piquet.

(2) If a non-commissioned officer :—

(*a*) Fine not exceeding ten days' pay to be levied by stoppages from the offender's pay;

(*b*) Reprimand;

(*c*) Deduction from his ordinary pay to make good the amount of any loss or damage he may have caused.

(3) If a follower :—

(*a*) Imprisonment for any period not exceeding fourteen days;

(*b*) Fine not exceeding ten shillings.

Punishments for drunkenness

(4) (A) The offence of drunkenness by a soldier may be dealt with and summarily punished, as laid down in section 46 (1) C of this Ordinance, by such officer or Administrative Officer, except that any sentence of reduction on an non-commissioned officer must be confirmed by the commanding officer.

(B) In the case of absence without leave, the non-commissioned officer or soldier may be dealt with as laid down in section 46 (1) B and 46 (2) B.

Delegation of powers of commanding officer to officer commanding detachment.

48. (1) It shall be lawful for the commanding officer by writing under his hand to confer the powers of a commanding officer, as defined by section 46 of this Ordinance, on the officer commanding any detachment, under such restrictions and for such period as he may think fit, and to revoke the same. Any sentence of reduction in the case of a non-commissioned officer, and any sentence of dismissal from the service, imposed under this section, shall be subject to the approval of the commanding officer.

Cases of aggravated or repeated offence to be reported to commanding officer.

(2) Whenever it shall appear to the officer commanding a detachment or Administrative Officer as aforesaid that the offence which any soldier or follower has committed would, by reason of its aggravation or by reason of previous offences of the accused, not be adequately punished with any of the aforesaid punishments, or combinations of punishments, he shall delay passing sentence, and shall report the whole proceeding in the case to the commanding officer who may send back such report for any further inquiry he considers requisite, or make any other or further order, or may rehear the case as he may see fit.

Remission of punishment.

(3) Any awards of punishment under this section shall be subject to any remission the commanding officer may order, but cannot be increased.

Powers of Officer Commanding a Company.

Punishments which officers commanding companies may award.

49. Any officer commanding a company may examine into the truth of any charge against a soldier or follower; and, if his decision is against the accused, he may impose upon him any one or more of the following punishments :—

(1) If a private or enlisted follower, save in the case of absence without leave or drunkenness :—

(*a*) Fine according to scale, as laid down in section 46 (1) C of this Ordinance, in case of drunkenness;

(*b*) Confinement to barracks for any period not exceeding seven days;

(*c*) Extra guards and piquets, but only for minor offences or irregularities when on, or parading for, guard or piquet;

(*d*) Deduction from his ordinary pay to make good the amount of any loss or damage he may have caused.

(2) If a non-commissioned officer :—

Reprimand.

(3) If a follower, a fine not exceeding five shillings.

(4) In the case of absence without leave the non-commissioned officer or soldier may be dealt with as laid down in the second sub-paragraph of section 46 (1) B.

Similar powers may, at the discretion of the commanding officer, be given to any other officer temporarily in command of a company.

Any awards of punishment under this section shall be subject to any remission the commanding officer may order, but cannot be increased.

Courts-Martial.

Description, constitution and powers of courts-martial.

50. (1) For the purposes of this Ordinance there shall be two kinds of courts-martial, that is to say :—

(*a*) General courts-martial.

(*b*) District courts-martial.

(2) A general court-martial shall be convened by the Governor or some officer deriving authority to convene a general court-martial from the Governor.

(3) A district court-martial shall be convened by an officer authorised to convene general courts-martial or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial.

(4) A general court-martial shall consist of not less than five officers each of whom must have held a commission in His Majesty's service for not less than three years, unless the officer convening the court-martial is of opinion that five officers are not available, having due regard to the public service, in which case the court-martial may consist of three officers, in which case also the convening officer may preside.

(5) A district court-martial shall consist of not less than three officers, each of whom must have held a commission in His Majesty's service for not less than two years, unless the officer convening the court-martial is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers.

(6) A general court-martial shall have power to try all persons subject to this Ordinance, and to pass sentence of death or such less punishment as is in this Ordinance mentioned : Provided that if the court-martial consists of less than five members, sentence of death shall not be passed on any prisoner without the concurrence of all the members.

(7) A district court-martial shall not award the punishment of death or of imprisonment in excess of two years; but, subject as aforesaid, any offence under this Ordinance committed by a person subject to this Ordinance may be tried and punished by a district court-martial.

(8) The president of a court-martial shall be appointed by order of the authority convening the court, and the convening officer may appoint himself as president.

Constituent members of court-martial.

(9) (*a*) One of the members of the court shall, if possible, be an officer of the battalion in which the person accused is serving, and the other members of the court may be officers of the regiment, or officers of His Majesty's Army or Royal Marine Forces, Royal Navy or Royal Air Force, or officers of any of His Majesty's naval or military services.

(*b*) In case of emergency, or when a sufficient number of military officers is not available, it shall be lawful for public officers of the Colony to sit as members of a court-martial, but in no case shall they sit as presidents, unless they are entitled to do so in virtue of their military rank in His Majesty's service.

Proceedings, how regulated.

(10) In all cases or matters before the court, the proceedings of the court shall be as nearly as may be in accordance with the Rules of Procedure made under the Army Act.

Field General Courts-Martial.

Field general courts-martial.

51. (1) Where a complaint is made to any officer in command of any detachment or portion of troops outside the Colony, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to this Ordinance, then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Ordinance referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows:—

(*a*) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any

person, unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of or resident in the country in which the offence is alleged to have been committed,

(*b*) A field general court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available having due regard to the public service, in which case the court-martial may consist of two officers,

(*c*) The convening officer may preside; but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain,

(*d*) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Ordinance, or imprisonment.

(2) Section 50 of this Ordinance shall not apply to a field general court-martial; but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3) A field general court-martial may, notwithstanding the restrictions enacted by this Ordinance in respect of the trial by court-martial of civil offences within the meaning of this Ordinance, try any person subject to this Ordinance who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Ordinance.

Confirmation and approval of sentences.

52. (1) The following authorities shall have power to confirm the findings and sentences of courts-martial, that is to say:—

(*a*) In the case of a district court-martial, the officer having authority to convene such a court-martial at the date of the submission of the finding and

sentence thereof: Provided that, in the case of a sentence of imprisonment being passed, the period of imprisonment does not exceed six months,

If the sentence of imprisonment exceeds six months, it shall be confirmed by the Governor, or by some officer having authority from him to confirm the findings and sentences of general courts-martial:

Provided that the president of a court-martial shall not have authority to confirm the finding or sentence of that court-martial; but shall refer the finding and sentence of that court-martial to the Governor or to some officer having authority from him to confirm the findings and sentences of courts-martial.

(*b*) In the case of a general court-martial the Governor or some officer deriving authority from him to confirm the findings and sentences of general courts-martial.

(2) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial.

(3) Sentence of death shall not be carried into effect, unless in addition to the confirmation otherwise required by this Ordinance, it is approved by the Governor.

(4) When the sentence imposed by a court-martial exceeds twelve months' imprisonment, the proceedings of the court shall be forwarded to the Governor.

(5) When a sentence passed by a court-martial has been confirmed, the Governor shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial.

Execution of Sentences.

Execution of sentences of imprisonment.

53. (1) Any sentence of imprisonment imposed upon any person subject to this Ordinance may be carried out in any military or civil prison established within the Colony, or, where

the sentence of imprisonment imposed does not exceed forty-two days, in any lock-up house or cells which for that purpose the Governor may think fit to attach to any fort or barracks. The Governor may from time to time make regulations for the government of such prisons and of any lock-up house or cells attached by him to any fort or barracks, and with regard to the admission, discharge, custody, removal, safeguarding, diet, labour, occupation, discipline, instruction, and offences of any persons confined therein, and with regard to any and every other matter or thing relating to and connected with the carrying out and management of imprisonment in any such prison, lock-up house or cells: Provided that no person shall be imprisoned in any such prison, lock-up house, or cells unless and until such regulations as aforesaid shall have been made and provided that any person, notwithstanding that his sentence exceeds forty-two days, may, whilst awaiting removal to a prison, be temporarily imprisoned in any such lock-up house or cells.

(2) A sentence passed upon any person subject to this Ordinance shall be in no respect affected by such person ceasing to be subject to this Ordinance by discharge or otherwise.

Gaolers to carry out sentences on order of commanding officer, etc.

(3) Every gaoler shall receive into his custody and carry out the sentence upon any person subject to this Ordinance sentenced to imprisonment for any offence under this Ordinance, upon an order in writing in that behalf being delivered to him under the hand of the commanding officer or of the officer or Administrative Officer imposing the sentence, which order shall specify the offence and the period and description of imprisonment.

Persons undergoing sentences deemed criminal prisoners.

(4) Every person whilst undergoing any such sentence of imprisonment shall be deemed to be and be dealt with as a criminal prisoner.

Pay not to accrue during absence without leave or imprisonment.

54. No pay shall accrue or become due to any native officer, soldier, or follower in respect of any period during which he is absent by reason of desertion, or without leave, or during which he is undergoing any sentence of imprisonment or is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial or on a charge of absence without leave for which he is afterwards awarded imprisonment by competent authority.

Fines to be recovered by stoppages.

55. (1) All fines imposed upon native officers or soldiers for offences under this Ordinance shall be recovered by stoppages from the offender's pay due at the time of committing such offence, or thereafter accruing due, and not from any other source or in any other manner.

Amount of stoppages.

(2) The amount of stoppage shall be in the discretion of the officers authorised to impose fines, in no case exceeding one-half of the daily pay of the offender; and whenever more than one order of stoppage for any cause is in force against the same person, so much only of his pay shall be stopped as shall leave him a residue of at the least one-half of his daily pay.

Accumulated stoppages.

(3) Where more than one order of stoppage is made upon the same person the order or orders later in date shall, if necessary, be postponed as to their enforcement until the earlier orders are discharged.

Stoppages for venereal disease.

(4) Soldiers admitted to hospital suffering from venereal diseases may be placed under stoppages of half their pay.

Disposal of fines on native officers or soldiers.

56. (1) All fines recovered within the Colony from native officers, soldiers or followers shall be paid over to the Treasurer of the Colony to be placed to the credit of a fund to be styled the "Military Fines Fund."

(2) No payment shall be made from the Military Fines Fund except on the authority of the Governor.

(3) The Governor may, on the recommendation of the officer commanding the troops, sanction payments from the Military Fines Fund for any of the following purposes, that is to say:—

(*a*) Assistance to the wives or families of deceased native officers, soldiers, or followers, or native officers, soldiers or followers discharged as invalids, who may be in immediate want;

(*b*) Contributions towards prizes to be given at athletic meetings, assaults-at-arms, and similar events organised by or for the benefit of the soldiers of the regiment;

(*c*) Purchase of ammunition for the encouragement of rifle shooting;

(*d*) Payments to soldiers of the regiment as rewards for special services when such payments cannot otherwise be met out of Colonial funds;

(*e*) Provision of any articles for the use of the regiment, when the cost of such provision cannot otherwise be met out of Colonial funds;

(*f*) As a reward to the apprehender or apprehenders of a deserter, and as a reward for recruiting.

(4) Annual statements of receipts and expenditure on account of the Military Fines Fund shall be rendered by the officer commanding the troops to the Governor, who will submit them to the Secretary of State.

Supplemental Provisions as to Discipline.

Restrictions as to punishment of native officer.

57. (1) The sentence on a native officer for any offence shall in no case include corporal punishment.

Restrictions as to punishment of non-commissioned officer.

(2) The sentence on a non-commissioned officer for any offence shall in no case include corporal punishment, or imprisonment, unless it also includes reduction of the offender to the rank of a private and in such case the sentence of reduction shall precede and be carried out before that of corporal punishment or imprisonment.

Restrictions as to corporal punishment.

58. No sentence of corporal punishment shall be carried out until a period of twenty-four hours has elapsed since the award, except on the line of march or on active service, and no such sentence shall in any case be carried out unless under the superintendence of a medical officer, or in case no medical officer is available, a European Government officer, nor until such medical officer or European Government officer shall certify the physical fitness of the offender to undergo the same, and in relation thereto the said medical officer or European Government officer may give and shall cause to be carried out such orders for preventing injury to health as he may deem necessary, and, in case the said medical officer or European Government officer shall order the punishment to be discontinued, it shall be immediately discontinued accordingly.

Apprehension of deserters.

59. (1) Upon reasonable suspicion that any person is a deserter any non-commissioned officer, private or enlisted follower of the regiment or other person may apprehend him, and forthwith bring him before the Administrative Officer of

the district wherein he was found, who shall deal with the suspected deserter as if he were brought before him by warrant under the laws in force in the Colony.

Procedure thereupon.

(2) Upon its appearing to such Administrative Officer by the testimony of one or more witnesses, or by his own confession, that the accused is a deserter, he shall cause him to be conveyed to the nearest detachment of the regiment, and delivered over to the officer in command thereof, together with an office copy of the proceedings and of the evidence taken by him; and such officer shall deal with the case in accordance with the provisions of this Ordinance.

Forfeiture of good conduct badges and pay consequential on certain sentences.

60. (1) Forfeiture of one good-conduct badge shall be deemed a part of any sentence of :—

(*a*) Imprisonment or confinement to barracks for more than seven days;

(*b*) Imprisonment for any term;

(*c*) Fine of any sum exceeding seven days' pay;

(*d*) Corporal punishment;

(*e*) Or in the case of a non-commissioned officer, severe reprimand;

and every such forfeiture shall be entered on the offender's defaulter sheet and in the guard report or punishment return.

Upon reduction of rank.

(2) If a non-commissioned officer be reduced to the rank of a private, or reduced in degree of rank, he shall forfeit one good-conduct badge, should he be in possession of the same: Provided that in the case of a non-commissioned officer being reduced to private, or in degree of rank, for inefficiency, he shall not forfeit a good-conduct badge.

In aggravated offences.

(3) The commanding officer may in any case of aggravated offence recommend to the Governor that the offender forfeit all or any good-conduct badges and pay that he may be in possession of or may have earned, and all or any decorations or honorary rewards, and any advantage as to gratuity on discharge which he may have earned by past service, and such effect shall be given to such recommendation as the Governor may determine.

Restoration of forfeited service.

61. Any native officer or soldier who has forfeited any period of past service qualifying towards good-conduct badges and pay or gratuity may have such service restored to him by

the Governor on the recommendation of the officer commanding the troops at any time as a reward for conspicuous gallantry in the field or other notable service, or when he has served with uninterrupted good conduct, as shown by his having no entries in his regimental conduct sheet, for two years in case of a first conviction entailing loss of service, for five years in case of a second conviction of the same nature, and for seven years in case of a third conviction of the same nature, or should circumstances of an aggravated character have attended the offence on account of which his service was forfeited. Such period of probation shall be reckoned from the release of the person convicted from imprisonment or other completion of his punishment and his return to duty.

Power of summoning witnesses.

62. (1) Every officer hereinbefore empowered to inquire concerning offences under this Ordinance shall in any matter touching such inquiries have the powers of a magistrate under the Criminal Procedure Code of summoning and examining witnesses on oath or affirmation, and calling for documents in any matter before him under this Ordinance, and of adjourning any hearing from time to time.

Form of proceedings.

(2) In every inquiry in which evidence is taken on oath or affirmation the proceedings and evidence shall be recorded in writing, and the course of proceeding with respect to the taking of evidence and the conduct of the inquiry shall be as nearly as may be in conformity with the practice prescribed in the Rules of Procedure made under the Army Act.

PART III.—GOVERNMENT.

Organization.

63. (1) A battalion shall consist of an officer with the rank of major in command and such other officers, British warrant and non-commissioned officers, native officers, non-commissioned officers, privates and enlisted followers as the Governor, subject to the approval of the Secretary of State, shall from time to time determine.

(2) Officers other than native officers shall be appointed by the Secretary of State.

(3) Officers, British warrant and non-commissioned officers, native officers, non-commissioned officers, privates, and enlisted followers shall receive such rates of pay as the Governor, subject to the approval of the Secretary of State. shall determine.

(4) The officers, British warrant and non-commissioned officers, native officers, non-commissioned officers, privates, and enlisted followers of the battalion shall stand with each other in order of precedence and command as they have been here named.

(5) The Governor may from time to time fill up all vacancies that may occur amongst the native ranks from removal, death, absence, incapacity, or other cause, by promotion or fresh appointments, and may at any time enlist fit men as privates and followers of the regiment, and every such enlistment shall be an appointment under this Ordinance.

Precedence of officers.

64. Officers of the same rank shall stand with each other in order of precedence and command in accordance with any order which may be signified by any of His Majesty's Principal Secretaries of State, and where no such order is signified, then according to their seniority reckoned by the dates of their respective appointments to the rank in the British Army for the time being held by them.

Inspector-General; duties of, etc.

65. (1) The Inspector-General shall be appointed by the Secretary of State, who may prescribe his duties.

(2) The Inspector-General shall inspect and report to the Secretary of State upon all officers, British warrant and non-commissioned officers, native officers, non-commissioned officers, privates and enlisted followers of the regiment, whether within or without the Colony, and upon the organisation, interior economy, and drill of the battalions and upon all matters appertaining to their welfare and efficiency.

(3) The Inspector-General may, whether within or without the Colony, issue instructions with regard to the organisation, interior economy, and drill of the regiment or any part thereof, and the officers, British warrant and non-commissioned officers, native officers, non-commissioned officers, privates and enlisted followers of the regiment shall conform to all such instructions.

(4) The Colony shall make such contribution towards the expenses of the Inspector-General, and to the expenses of the Colonial battalion or battalions serving out of the Colony as the Secretary of State may determine.

Duties of officer commanding the troops.

66. The officer commanding the troops, subject to the orders and directions of the Governor, shall have the direction and general superintendence of all troops in the Colony.

Duty of commanding officer.

67. A commanding officer, subject to the orders and directions of the officer commanding the troops, shall have the command, direction and general superintendence of his battalion.

Duties of officers.

68. The officers of the regiment, when posted to any station or district, shall be charged with the command, direction, and superintendence of the British warrant and non-commissioned officers, native officers, non-commissioned officers, privates and enlisted followers of the regiment from time to time posted within such station or district subject to the orders of the commanding officer and of the Governor. When not posted to a station or district, the officers shall have such command and such duties as the commanding officer, subject to the orders of the Governor, may direct.

Responsibility of officer commanding the troops and commanding officers for stores.

69. (1) The officer commanding the troops shall be charged with, and accountable for, all unissued public stores of whatever description.

(2) The commanding officer shall be charged with, and accountable for, all public stores of whatever description belonging to or appertaining to the battalion under his command in case of their being lost, spoiled or damaged, otherwise than by unavoidable accident, theft, robbery or actual use.

Responsibility of officers commanding detachments for stores.

70. Every officer in command of any detachment of the regiment shall be charged with the arms, accoutrements, ammunition, clothing, and all other public stores, and with all public moneys issued and delivered for the use of the detachment of the regiment under his command, and shall account for such arms, accoutrements, ammunition, clothing, and stores to the commanding officer in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, theft, robbery, or actual use, and to the staff paymaster for such public moneys in case of their being lost, otherwise than by unavoidable accident, theft, or robbery.

Duty and responsibility of staff pay and staff quartermaster.

71. The staff paymaster shall be charged with such duties in connexion with the accounts of the brigade as may be entrusted to him by the officer commanding the troops. The staff quartermaster shall have the immediate custody of, and account to the officer commanding the troops for, all unissued

arms, accoutrements, clothing, necessaries, ammunition, and other Government stores in his charge appertaining to the brigade, and he shall issue the same upon the requisition of the officer commanding the troops, or according to such regulations as the Governor may from time to time prescribe.

Governor to make regulations, etc.

72. The Governor may from time to time, in consultation with the officer commanding the troops, make such rules and regulations consistent with this Ordinance and subject to the provisions thereof, relative to any unit as may be necessary for the purpose of preventing the spread of contagious disease, and to render the force efficient in the discharge of its duties, and for the discipline, good order, and guidance of the force, for the form and method of enlistment of the persons constituting the same, and for their general government, the services required of them, their conduct in the performance thereof, their distribution, posting, and removal from station to station and their inspection, and for the description, supply, use, and disposal of arms, accoutrements, clothing, necessaries, and other warlike stores, to be furnished to them, and also with relation to the fiscal duties to be performed by the pay or quarter-masters and other officers with relation to the regiment, and generally for the better carrying out of the provisions of this Ordinance.

PART IV.—ENLISTMENT, DISCHARGE, AND SERVICE.

First term of engagement.

73. (1) Every soldier other than a hospital dresser, syce, sweeper or boy shall be enlisted for a first term of engagement to serve in the regiment in one or other of the following categories :—

(*a*) For three years with the colours and six years with the reserve.

(*b*) For six years with the colours and six years with the reserve.

(*c*) For nine years with the colours and six years with the reserve.

(2) Hospital dressers, syces and sweepers shall be enlisted for such term as may from time to time be fixed by the Governor.

(3) Boys shall be enlisted for a first term of engagement to serve in the regiment for nine years with the colours.

Rules for reckoning service.

74. In reckoning the service of any native officer or soldier for discharge or re-engagement there shall be excluded therefrom all periods during which he has been absent from his duty from any of the following causes :—

(*a*) Imprisonment for any cause save that of detention awaiting any trial which results in the acquittal or discharge of the prisoner.

(*b*) Desertion for any period.

(*c*) Absence without leave exceeding forty-eight hours.

Re-engagement and continuance in service

75. (1) Any native officer or soldier of good character who at any time has completed, or is within three months of completing, the term of his engagement with the colours may, with the approval of his commanding officer, re-engage to serve in the next highest category as from the date of his original enlistment.

(2) Any native officer or soldier of good character who has completed at least nine years' service with the colours may, with the approval of the commanding officer, re-engage for such further periods of three years each as shall complete a total period of eighteen years' colour service, reckoning from the time of his first enlistment.

(3) And upon completing such period of eighteen years' service he may, if he shall so desire, and with the approval of the officer commanding the troops and of the Governor, continue in the regiment in the same manner in all repects as if his term of service were still unexpired, except that it shall be lawful for him to claim his discharge at the expiration of any period of three months after he has given notice to the officer under whose command he is serving of his wish to be discharged.

Conditions of re-engagement.

76. (1) Any native officer or soldier other than a bandsman who is entitled to go to the reserve or to his discharge, and who has completed six years' service with the colours, shall, on re-engaging for further service with the colours with the approval of his commanding officer, be allowed to proceed on furlough for such period on full pay or half pay, at the discretion of his commanding officer, as may be prescribed by regulations made under this Ordinance.

(2) A bandsman shall be allowed to proceed on furlough for one month in each year.

(3) If a native officer is re-appointed, or if a soldier offers to re-enlist, within six months after having received a certificate of discharge he shall on re-appointment or re-enlistment be entitled to the advantages to which he was entitled with regard to rank, good-conduct badges, pay and gratuity at the time of his discharge. If, however, a longer period than six months from the date of his discharge has elapsed, then it shall be discretionary with the officer commanding the troops to allow the service, or part of the service, of such person previous to the date of such re-appointment or re-enlistment to reckon towards rank, good-conduct badges, pay and gratuity.

Declaration on enlistment, etc.

(4) In the event of enlisted followers being attested as privates, it shall be discretionary with the commanding officer to allow the service, or part of the service, of such person, whilst an enlisted follower, up to a maximum of three years, to reckon towards good-conduct badges, pay and gratuity.

77. Every man who is enlisted, re-enlisted, or re-engaged, or being a native officer is re-appointed in the regiment as aforesaid, shall, previous to his being enlisted, re-enlisted, re-engaged or re-appointed, make the following declaration, and shall confirm such declaration by oath in his native language in such manner as he may declare to be most binding upon his conscience :—

I, *A.B.*, do hereby solemnly and sincerely declare and promise that I will be faithful and bear true allegiance to His Majesty King George V., his heirs and successors, and that I will faithfully serve and defend His Majesty the King, his heirs and successors, for a period of.....years with the colours and.....years with the reserve, and will obey all orders of His Majesty and of the officers placed over me, and subject myself to all ordinances, rules, and regulations relating to the King's African Rifles now in force, or which may from time to time be in force within the said period.

Signature or mark.

Declared at this day of , 19 ,
before me.

Signature of officer.

Prolongation of service terminating during war.

78. Any native officer or soldier, whose period of service expires during a state of war, insurrection, or hostilities, may be detained, and his service prolonged for such further period, not exceeding twelve months, as the Governor may direct.

Discharge on completion of service.

79. Subject to the provisions of section 75 and of the last preceding section, every native officer or soldier who has completed his period or periods of engagement or service according to the provisions of this Ordinance, shall be discharged by his commanding officer, unless at the expiration of any period he is undergoing punishment for, or stands charged with, the commission of any offence under this Ordinance, and in case he is undergoing such punishment, or is charged with any such offence, his service shall be prolonged and his discharge deferred until such punishment shall have terminated, or until he has undergone his trial and any punishment awarded in respect of the offence with which he is charged, unless his sentence carries with it dismissal from the regiment.

Native officers or soldiers subject to all regulations until formal discharge.

80. Every native officer or soldier, until he has received a certificate of discharge, shall remain subject to all the provisions of this Ordinance and to all rules and regulations made in pursuance thereof.

Discharge when unfit for service or on being dismissed.

81. (1) A native officer may be discharged by his commanding officer at any time during the currency of any term of engagement :—

(*a*) When pronounced by the medical officer mentally or physically unfit for further service.

(*b*) When sentenced to be dismissed the regiment for misconduct.

(*c*) On reduction of establishment.

(2) A soldier may be discharged by his commanding officer at any time during the currency of any term of engagement :—

(*a*) When pronounced by the medical officer mentally or physically unfit for further service.

(*b*) When sentenced to be dismissed the regiment for misconduct.

(*c*) If within one year from the date of attestation his commanding officer shall consider that he is unlikely to become an efficient soldier.

(*d*) On reduction of establishment.

Consequence of discharge or dismissal.

82. When any native officer or soldier ceases to belong to the regiment, either by being dismissed therefrom, or by being discharged on the termination of his period of engagement, or as unfit for further service, or on reduction of establishment, all powers and authorities vested in him shall, upon a certificate of discharge being given to him, immediately cease and determine. He shall, before a certificate of discharge is delivered to him, deliver over his arms, ammunition, accoutrements, uniform, and other appointments which are the property of the Government of the Colony to such person and at such time and place as shall be directed by the officer under whose command he may be at the time of ceasing to belong to the regiment: Provided that a soldier discharged before the expiration of one year for any fault, or as not likely to make an efficient soldier, shall not take away with him any arms, or any articles of uniform or equipment described by any rules or regulations as personal property of soldiers.

Good-conduct pay.

83. (1) Every non-commissioned officer under the rank of sergeant, and every private, driver and hospital dresser and enlisted machine-gun and Lewis-gun porter who shall have served for three years without having been convicted of any offence by a Court Martial or Civil Court, and without having incurred a sentence of:—

(*a*) Imprisonment or confinement to barracks for more than seven days;

(*b*) Fine in any sum exceeding seven days' pay;

(*c*) Corporal punishment;

(*d*) Or in the case of a non-commissioned officer, severe reprimand;

(*e*) Or in the case of a non-commissioned officer, reduction in rank, or to the ranks, or deprivation of lance-stripe,

shall be entitled to bear one good-conduct badge, and receive extra pay at the rate of Shs. 1/50 per month; and for every subsequent period of three years which he shall have served under like conditions he shall be entitled to bear one additional good-conduct badge, and to receive extra pay at

the rate of an additional Shs. 1/50 per month for each badge: Provided that no non-commissioned officer, private, driver and hospital dresser or enlisted machine-gun and Lewis-gun porter shall receive more than six good-conduct badges.

(2) Any non-commissioned officer, private, driver and hospital dresser or enlisted machine-gun and Lewis-gun carrier who shall have forfeited a good-conduct badge shall, after having served for twelve months without having been convicted of any offence by a Court Martial or Civil Court and without having incurred a sentence of :—

(*a*) Imprisonment for any term;

(*b*) Confinement to barracks for more than seven days;

(*c*) Fine in any sum exceeding seven days' pay;

(*d*) Corporal punishment;

(*e*) Or in the case of a non-commissioned officer, severe reprimand;

(*f*) Or in the case of a non-commissioned officer, reduction in rank, or to the ranks, or deprivation of lance-stripe,

be entitled to have his good-conduct badge restored to him and to receive the extra pay in respect thereof as hereinbefore provided, and his service towards a further good-conduct badge shall be reckoned from the date of such restoration.

Gratuities on discharge, etc.

84. (1) On the recommendation of the officer commanding the troops, and with the sanction of the Governor, gratuities at the following rates, in lieu of pension, may be granted on discharge after continuous good service extending to a period of twelve years, viz. :—

	£
To native officer	60
,, native regimental sergeant-majors or company sergeant-majors ...	30
,, sergeants	15
,, corporals	12
,, lance-corporals, privates, drivers and hospital dressers	9
,, enlisted followers	4

And at the following rates after a total continuous good service extending to eighteen years, viz. :—

	£	s.
To native officer	90	0
,, native regimental sergeant-majors or company sergeant-majors ...	45	0
,, sergeants	22	10
,, corporals	18	0
,, lance-corporals, privates, drivers and hospital dressers	13	10
,, enlisted followers	6	0

For the purpose of this sub-section service under the provisions of section 76 (2) shall be deemed to be continuous with previous continuous service.

(2) No gratuity shall be paid in respect of any period of service in excess of a total service of eighteen years; and no native officer, non-commissioned officer, private, or enlisted follower who has received a gratuity on discharge after twelve years' service shall, in the event of his afterwards being re-appointed or re-enlisting, as the case may be, receive in respect of his service after such reappointment or re-enlistment any higher gratuity than may, together with such first gratuity, be equal to the gratuity which he might have earned by continuous service for eighteen years.

(3) Where any native officer or soldier, whose terms of engagement and re-engagement combined shall amount to a continuous period of not less than twelve years, is discharged as unfit for further service, or as inefficient, or on account of reduction of establishment, he may, at the discretion of the commanding officer and subject to the sanction of the Governor, receive the whole or a part of such proportion of the gratuity which he might have earned if he had completed a period of eighteen years' service as the number of years actually served by him bears to eighteen.

(4) Where any native officer or soldier, whose terms of engagement and re-engagement combined shall amount to a continuous period exceeding twelve years, and who shall have actually completed a period of not less than twelve years' continuous good service, is dismissed for misconduct, he may receive such proportion of the gratuity which he would have earned if he had taken his discharge after the completion of

the period of service immediately preceding the period of service he is then passing through as his commanding officer may in his discretion, subject to the sanction of the Governor, determine.

(5) In the event of the death of any native officer or soldier before the receipt by him of any such gratuity as is mentioned in either of the two preceding sub-sections of this section, it shall be lawful for the Governor to direct and cause the amount to be paid to, or for the benefit of, the widow or widows, or child or children, or to any next-of-kin of the native officer or soldier, so dying, on such conditions, and, if to or for the benefit of more than one person, in such proportions as to the Governor shall seem fit.

(6) Where any native officer or soldier, whose terms of engagement and re-engagement combined shall amount to a continuous period of twelve years, dies while serving in the regiment before completing such continuous period, it shall be lawful for the Governor to direct and cause such proportion of the gratuity which he would have earned if he had completed the full period of twelve years' service as the number of years actually served by him bears to twelve, to be paid to, or for the benefit of, the widow or widows, or child or children, or to any next-of-kin of the native officer or soldier so dying, on such conditions, and, if to or for the benefit of more than one person, in such proportions as to the Governor shall seem fit.

(7) Where any native officer or soldier whose terms of engagement and re-engagement combined shall amount to a continuous period exceeding twelve years, dies while serving in the regiment before completing such continuous period, it shall be lawful for the Governor to direct and cause such proportion of the gratuity which he would have earned if he had completed a period of eighteen years' service as the number of years actually served by him bears to eighteen, and if he shall have actually served for eighteen or more years the full gratuity which he would have earned if he had taken his discharge after the completion of a continuous period of eighteen years' service, to be paid to, or for the benefit of, the widow or widows, or child or children, or to any next-of-kin of the native officer or soldier, so dying, on such conditions, and, if to or for the benefit of more than one person, in such proportions as to the Governor shall seem fit.

(8) Every native officer or soldier subject to such recommendation and sanction as aforesaid, shall after nine years' continuous good service be exempted from paying hut tax for one hut for life, or alternatively from paying poll tax in respect of himself for life.

For the purpose of this sub-section, service under the provisions of section 76 (2) shall be deemed to be continuous; and in the case of enlisted followers, under section 76 (3).

(9) Any native officer or soldier being in possession of the Victoria Cross or the medal for Distinguished Conduct in the Field, shall, subject to such recommendation and sanction as aforesaid, irrespective of the amount of his service, be exempted from paying hut tax for three huts for life in the case of the Victoria Cross and for one hut in the case of the medal for Distinguished Conduct in the Field, or alternatively shall be entitled to such equivalent exemption from taxation as may be determined by the Governor.

Gratuities on decease.

85. Any gratuity that might have been received by any native officer or soldier had he taken his discharge under the provisions of this Ordinance shall, in the event of his re-engaging for a further term and dying in the service before the completion of such term, and subject to the recommendation of the commanding officer, and the sanction of the Governor as aforesaid, be deemed for the purposes of this Ordinance to be his personal property in the charge of the Treasurer for the time being, and shall be paid out and distributed by the Treasurer or such other person as he may appoint in accordance with the provisions and conditions of this Ordinance.

Regiment may be temporarily increased.

86. It shall be lawful for the Governor, subject to the directions of the Secretary of State, when occasion arises, to enrol for a limited period such number of officers, British non-commissioned officers, native officers and soldiers as he shall deem necessary; the period or number limited by such order may from time to time be prolonged, shortened, increased, reduced or varied by any subsequent order of the Governor: Provided that no man shall be compelled to serve for a longer period than that for which he was enrolled under this section, except with his own consent.

87. Save as hereinafter enacted, all the provisions of this Ordinance, and of any Ordinance amending or extending the same, and of the rules and regulations which may from time to time be in force, shall, so far as they may be applicable, apply to all officers, British warrant and non-commissioned officers, native officers and soldiers, enrolled under the last preceding section; and such officers, British warrant and non-commissioned officers, native officers and soldiers shall be deemed to be for all purposes part of the regiment as long as they shall be serving therein: **Condition of service of persons temporarily enrolled.**

Provided always that when any officers, British warrant or non-commissioned officers, native officers or soldiers who are enrolled in, belong to, or are in the service of any Colony, Protectorate or Territory shall be enrolled for temporary service in the Colony under this Ordinance, the rate of pay to be given them, the mode and time of payment, and all other matters relating to the pay and remuneration of such officers, British warrant and non-commissioned officers, native officers and soldiers may be arranged between the Governor and the Officer Administering the Government of the Colony, Protectorate or Territory in which the said officers and soldiers may be previously enrolled, or in the service of which they may be; but subject to this proviso, all officers, British warrant and non-commissioned officers, native officers and soldiers temporarily enrolled under this Ordinance shall receive the rates of pay respectively drawn by officers, British warrant and non-commissioned officers, native officers and soldiers of equal rank in the regiment.

88. Every soldier temporarily enrolled under this Ordinance shall make the following declaration, and shall confirm his declaration by oath in his native language in such manner as he may declare to be most binding upon his conscience:— **Oath on temporary enrolment.**

I, *A. B.*, do hereby solemnly and sincerely declare and promise that I will be faithful and bear true allegiance to His Majesty King George V., his heirs and successors, and that I will faithfully serve and defend His Majesty the King, his heirs and successors, and the Government of the Colony until I am discharged, and will obey all orders of His Majesty and of the officers placed over me, and

subject myself to all Ordinances, rules and regulations relating to the King's African Rifles now in force, or which may from time to time be in force during my service.

Signature or mark.

Declared at , this day of , 19 ,

before me.

Signature of officer.

PART V.—GENERAL PROVISIONS.

Enforcements of Civil Contracts.

Native officer or soldier not to be taken from service except for criminal charge or debt of £20 or upwards.

89. (1) Any native officer or soldier shall be liable to be taken out of the King's African Rifles only by process or execution on account of any criminal charge, or on account of an original debt proved by affidavit of the plaintiff, or of someone on his behalf, to the value of £20 at the least over and above all cost of suit, but not for any original debt not amounting to £20, nor for the breach of any covenant, agreement, or other engagement, nor for having left or deserted his employer or master, or his contract, work, or labour; and all warrants or other process of execution on account of the matters for which it is herein declared that such native officer or soldier is not liable to be taken out of the said service shall be null and void.

Plaintiff may have execution other than personal.

(2) Any plaintiff, upon notice of the cause of action first given in writing to the officer under whose command the defendant is serving at the date of service of the writ of summons, may proceed in any action or suit to judgment, and have execution other than against the body of any native officer or soldier or other than (except as next after mentioned) against the pay due or accruing due to him.

Pay of native officers or soldiers not arrestable for debt: exception.

(3) The pay of any native officer or soldier due or accruing to him at the date of any judgment, or afterwards, shall not be liable to be arrested upon any civil process except in respect of any debt or liability which he may have incurred within three years next before being appointed to the regiment, and for such debt or liability, when constituted by decree, his pay may be arrested to an extent not exceeding one-third thereof. Where an order for such arrestment is made, the Court making the order shall give notice thereof to the paymaster,

and thereupon the amount ordered shall be stopped out of the judgment debtor's pay until the amount of the decree is made good.

Ordinary course of law not to be interfered with.

90. (1) Nothing in this Ordinance shall be construed to exempt any person subject to this Ordinance from being proceeded against by the ordinary course of law when accused of any crime or offence punishable under any other law in force in the Colony and whenever any person subject to this Ordinance is accused of any capital crime or of violence or of any offence against person or property punishable by the law of the Colony the officers, British warrant and non-commissioned officers, native officers and soldiers shall use their utmost endeavours to cause such persons to be discovered and secured and delivered over to be tried in the ordinary course of justice.

(2) No person subject to this Ordinance shall be tried by court martial for an offence against the State within the meaning of Chapter VII of the Penal Code, murder, manslaughter, or rape, unless the place at which the offence was committed is approximately more than sixty miles as measured in a straight line from any place in which the offender can be tried for such offence by a competent civil court.

Exemption from second trial or punishment for same offence.

91. (1) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be tried by court-martial or to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial. An offender shall not be liable to be tried by a civil court for any offence which has been dealt with summarily by his commanding officer or for which he has been tried by court-martial.

(2) If any person subject to this Ordinance has been convicted by a competent civil court of any crime or offence he shall not be liable to be punished for the same under this Ordinance, otherwise than by loss of pay under section 54, and in the case of a native officer or non-commissioned officer by reduction to an inferior rank or to the rank of a private, by order of the Governor, or by dismissal from the regiment,

or by the loss of the whole or any period of his previous service reckoning towards discharge, or by the loss of all or any good-conduct badges which he may possess, together with forfeiture of the whole or any part of any good-conduct pay of which he is in receipt, by order of the Governor.

Unlawful possession of arms, etc., of the regiment.

92. (1) Every person who :—

(*a*) Buys, exchanges, takes in pawn, detains, or receives from any person, on any pretence whatever; or

(*b*) Solicits or entices any person to sell, exchange, pawn, or give away; or

(*c*) Assists or acts for any person in selling, exchanging, pawning, or making away with,

any of the property following; namely, any arms, ammunition, equipment, instruments, regimental necessaries, or clothing, issued for the use of officers or soldiers, or any military or air force decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, or stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier or his horse or of any horse employed in the Government service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or that the same was sold by order or with the consent of the Governor, or some competent military authority, or that the same was the personal property of an officer who has retired or ceased to be an officer, or of a soldier who has been discharged, or of the legal personal representatives of an officer or soldier who had died, be liable to a fine not exceeding eighty pounds, together with double the value of any propery of which such offender has become possessed by means of his offence, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a Subordinate Court of the First or Second Class, and, if such Court have reasonable cause to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained, or received in contravention of this section, then, if such person does not satisfy the Court that he came by the property

so found lawfully and without any contravention of this Ordinance, he shall be liable to the same penalties as are prescribed in the case of contravention of the last preceding sub-section.

(3) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a Subordinate Court of the First or Second Class; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reason to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property and forthwith take him, together with such property, before a Subordinate Court of the First or Second Class.

(4) A Subordinate Court of the First or Second Class, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some Subordinate Court of the First or Second Class, to be dealt with according to law.

(5) For the purpose of this section, property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit or for the use or benefit of another.

(6) Every person who :—

(*a*) Receives, detains, or has in his possession, any identity certificate, life certificate, or other certificate, or official document evidencing or issued in connection with the right of any person to a military pension, pay, or reserve

pay, or to any bounty, allowance, gratuity, relief, benefit, or advantage granted in connection with military service, as a pledge or security for a debt, or with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person; or

(*b*) Without lawful authority or excuse (the proof whereof shall lie on the accused) has in his possession any such certificate or document, or any certificate of discharge, or any other official document issued in connection with the mobilisation or demobilisation of any of His Majesty's Forces or any member thereof,

shall be liable to the like penalty as for an offence under sub-section (1) of this section; and any such certificate or other document shall be deemed to be property within the meaning of this section.

Legal Penalties in Matters Respecting Regiments.

Inducing members of the corps to desert.

93. Any person who by any means whatsoever directly or indirectly procures or persuades, or attempts to procure or persuade, any native officer, non-commissioned officer, private, or enlisted follower of the regiment to desert, or who aids, abets, or is accessory to the desertion of any native officer, non-commissioned officer, private, or enlisted follower of the regiment, or who, having reason to believe that any man is a deserter, harbours such deserter or aids him in concealing himself, or aids or assists in his rescue, shall be liable to imprisonment for a term not exceeding six months, and shall in addition be liable to a fine not exceeding twenty pounds or to both such fine and imprisonment.

Inciting to mutiny, etc.

94. Any person who aids, abets, or is accessory to any mutiny, sedition, or disobedience to any lawful command of a superior officer by any native officer, non-commissioned officer, private, or enlisted follower of the regiment, or maliciously endeavours to seduce any native officer, non-commissioned officer, private, or enlisted follower of the regiment from his allegiance or duty, shall be liable to imprisonment for a term not exceeding two years, and shall in addition be liable to a fine not exceeding eighty pounds or to both such fine and imprisonment.

Personating; penalty.

95. Whoever, not being a member of the regiment, or being a deserter therefrom, puts on the dress or accoutrements of a person serving in the regiment, or part thereof, or any dress intended to simulate that of the regiment, or part thereof, or any medal or badge which he is not authorised to wear, or takes the name, designation, or character of a person appointed to or serving in the regiment, for the purpose of thereby doing or obtaining to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding eighty pounds or to both such fine and imprisonment.

Procedure where offences committed by other persons.

96. All offences under this Ordinance committed by persons not being subject to Part II of this Ordinance shall be prosecuted, and all sentences imposed on such persons shall be carried into effect, in the manner provided by the laws in force in the Colony, and the amount of any fines recovered shall be paid to the Treasurer and form part of the public revenue.

Disposal of fines.

Wills and Distribution of Property.

Native officer on appointment and soldier on enlistment to register name of person to whom estate is to be paid in the event of his dying intestate.

97. (1) Every native officer on appointment and every soldier on enlistment shall declare the name of the person or persons to whom, in the event of his decease without having made a valid will, any money or personal property due or belonging to him should be paid or delivered, and the name of such person or persons shall be recorded at the headquarters of the officer's or soldier's battalion. The record shall be verified periodically, and it shall be the duty of the officer or soldier to report any alteration in the record which he wishes made.

(2) The paymaster or any officer of the regiment, or of the Treasury, or other public department, having in his charge or control any pay, accumulations of pay, gratuity, or other allowance, or any personal property or money belonging to any native officer or soldier dying intestate who has complied with the above conditions, may pay or deliver the same to the person or persons whose name or names has or have been recorded by the native officer or soldier in the manner prescribed.

Form of will.

98. (1) Any will made by a native officer or soldier of the regiment shall be valid for disposing of any money or personal property which shall be due or belonging to him at his decease :—

If it is in writing and signed or attested by his mark and acknowledged by him in the presence of, and in his presence attested by, one witness, being an officer of the regiment or public officer of the Colony ; or

If it is executed with the formalities required by any law now or hereafter in force in the Colony.

Such will shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to the money or personal property thereby bequeathed.

Accumulation of pay, etc., if less than £75 may be paid without probate.

(2) The paymaster or any officer of the regiment, or of the Treasury or other public department, having in his charge or control any pay, accumulations of pay, gratuity, other allowance, or any personal property, or money belonging to such testator not exceeding in the aggregate the value of £75, may pay or deliver the same to any person entitled thereto under the will, or to the person entitled to procure probate of, or administration under, such will, although probate or administration may not have been taken out.

Probate to be taken if value exceeds £75.

If the value of the said money and personal property exceeds the said sum of £75, the paymaster or other officer as aforesaid, having the same in his charge or control, shall require probate or administration to be taken out, and thereupon pay and deliver the said money and effects to the legal representative of the deceased.

Distribution in cases of intestacy.

99. In case any native officer or soldier of the regiment dies without having complied with the requirements stated in section 97 of this Ordinance, and without having made any valid will under this or any law or ordinance regulating wills for the time being in force, the paymaster or other officer having in his charge or control money or personal property of the deceased as aforesaid may, with the concurrence of the Governor, pay or deliver such money or personal property to any claimant showing herself or himself to the satisfaction of the Governor to be the widow of the deceased or to be the child or any near relative of the deceased, according to

the rules of kinship of the tribe to which the deceased belonged, and where there are more such claimants than one, then in such shares and proportion as the claimants would be entitled to receive under the rules of succession prevailing among such tribe or as nearly as may be.

As to payment of debts.

100. Notwithstanding anything hereinbefore contained, if in cases where probate of the will or administration to the estate of the deceased is not taken out, the paymaster or other officer aforesaid, before disposing of the money and personal property of the deceased in manner aforesaid has notice of any debt due by the deceased, he shall apply such money and property so far as remaining in his charge or control, or so much thereof as may be requisite, in or towards payment of such debt, subject to the following conditions :—

(1) That the debt accrued within three years before the death.

(2) That payment of it is claimed within one year after the death.

(3) That the claimant proves the debt to the satisfaction of the company commander.

Any person claiming to be a creditor of the deceased shall not be entitled to obtain payment of his debt out of any money that may be in the hands of the paymaster or any officer of the regiment, or of the Treasury or other public department, except by means of a claim on the paymaster or commanding officer or some Administrative Officer, and proceeding thereon under and according to this Ordinance.

Property distributed subject to rights of creditors.

101. In all cases where the money or personal property of the deceased or any part thereof is paid or delivered to any person as being interested therein by reason of his or her name having been recorded in accordance with section 97 of this Ordinance, or under the will of the deceased, or as his widow or child or near relative, or in any other manner under this Ordinance, any creditor of the deceased shall have the same rights and remedies against such person as if he or she had received the same as a legal personal representative of the deceased.

Money undisposed of applied to regiment fund.

102. If the money or personal property belonging to the deceased, or any part thereof, remains for one year undisposed of or unappropriated, and without any valid claim thereto having been made, then the paymaster or other officer having the charge or control thereof shall apply and

make over the same towards any fund for the benefit of the regiment which may be prescribed by any order or regulations of the Governor :

Provided that the application under this section of any such money or property or part thereof, undisposed of or unappropriated as aforesaid, shall not be deemed to bar any claim of any person to the same, or any part thereof, that may be established at any time after such application.

Medals and decorations excepted.

103. Medals, uniforms, and decorations shall not be considered to be comprised in the personal estate of any deceased with reference to claims of creditors, or for any of the purposes of administration under this Ordinance or otherwise, and the same shall be delivered to and held by the company commander, and disposed of according to regulations made by the officer commanding the troops under the authority of the Governor.

Application of money, etc., in case of desertion.

104. In every case of desertion the money or property of the deserter in the charge or control of the paymaster, or any other officer as aforesaid, shall be disposed of according to regulations made by the Governor :

Provided that in every such case the provisions of section 99 of this Ordinance shall, *mutatis mutandis*, apply as nearly as may be.

PART VI.—APPLICATION OF MILITARY LAW AND MISCELLANEOUS PROVISIONS.

Application of the Army Act.

105. The Army Act and any Articles of War or rules made in pursuance of such Act, and for the time being in force, shall, as to the provisions therein contained respecting discipline, apply—

(*a*) At all times to officers and British warrant or non-commissioned officers appointed to or attached to the regiment.

(*b*) To native officers, non-commissioned officers, privates, enlisted followers and followers when on active service, within the meaning of the said Act : Provided that any native officer, non-commissioned officer, private, or enlisted follower or follower who is guilty of any offence named in Part II of this Ordinance or in the Army Act when on active service within the meaning of that Act, may be punished as provided by this Ordinance.

(*c*) To native officers, non-commissioned officers, and privates during their residence in the United Kingdom when sent there for the purpose of undergoing instruction or training, or other duty or employment.

Application of this Ordinance.

106. This Ordinance shall apply to native officers and soldiers—

(*a*) When in the Colony; and

(*b*) When employed out of and beyond the Colony in accordance with section 4 (3) of this Ordinance, in so far as it may be applicable.

Interpretation of active service.

107. A person subject to this Ordinance shall, if such interpretation be not inconsistent with the context, be deemed to be on active service whenever he is attached to or forms part of a force which is engaged in operations in a country or place wholly or partly occupied by the enemy, or is in military occupation of any country, or is engaged in any punitive patrol, patrol, or escort in any unsettled or disturbed area, or in any area declared by the Governor to be an unsettled or disturbed area.

Repeal. *Cap.* 40.

108. The King's African Rifles Ordinance (Chapter 40 of the Revised Edition) is hereby repealed:

Provided that all officers and soldiers serving with the King's African Rifles at the date of the commencement of this Ordinance shall be deemed to have been appointed, enlisted, or enrolled under this Ordinance, but shall not be required to serve with the King's African Rifles for a longer period than that for which they were required to serve at the time of appointment, enlistment or enrolment.

No. 32 OF 1930.

Date of assent. [3RD SEPTEMBER, 1930.]

An Ordinance relating to Bankruptcy.

Date of commencement. *3rd September, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

PART I.

PRELIMINARY.

Short title. **1.** This Ordinance may be cited as " the Bankruptcy Ordinance, 1930."

Interpretation. **2.** In this Ordinance, unless the context otherwise requires :—

"Affidavit " includes statutory declaration, affirmation and attestation on honour:

"Available act of bankruptcy " means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

" Bailiff " means any person charged with the execution of any process;

" The court " means the court having jurisdiction in bankruptcy under this Ordinance;

" Debt provable in bankruptcy " or " provable debt " includes any debt or liability by this Ordinance made provable in bankruptcy;

" Gazetted " means published in the Gazette;

" General rules " includes forms;

" Goods " includes all chattels personal;

" Local bank " means any bank in the Colony;

" Ordinary resolution " means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

" Prescribed " means prescribed by general rules within the meaning of this Ordinance;

" Property " includes money, goods, things in action, land, and every description of property whether movable or immovable and whether situate in the Colony or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

" Resolution " means ordinary resolution;

" Secured creditor " means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor;

" Reciprocating court " means a court having jurisdiction in bankruptcy or insolvency in a reciprocating territory;

" Reciprocating territory " means any territory declared a reciprocating territory under section 147 of this Ordinance;

" Special resolution " means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

" Trustee " means the trustee in bankruptcy of a debtor's estate.

PART II.

Proceedings from Act of Bankruptcy to Discharge.

Acts of Bankruptcy.

Acts of bankruptcy.

3. (1) A debtor commits an act of bankruptcy in each of the following cases:—

(*a*) If in the Colony or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.

(*b*) If in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.

(*c*) If in the Colony or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would

under this or any other Ordinance be void as a fraudulent preference if he were adjudged bankrupt.

(*d*) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of the Colony, or being out of the Colony remains out of the Colony, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.

(*e*) If execution against him has been levied by seizure of his goods in any civil proceeding in any court, and the goods have been either sold or held by the bailiff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days.

(*f*) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.

(*g*) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in the Colony, or, by leave of the court, elsewhere, a bankruptcy notice under this Ordinance, and he does not within seven days after service of the notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained.

For the purposes of this paragraph and section 4 of this Ordinance, any person who is, for the time

being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.

(*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Ordinance, the expression "a debtor" unless the context otherwise implies, includes any person, whether domiciled in the Colony or not, who at the time when any act of bankruptcy was done or suffered by him—

(*a*) was personally present in the Colony; or

(*b*) ordinarily resided or had a place of residence in the Colony; or

(*c*) was carrying on business in the Colony, personally, or by means of an agent or manager; or

(*d*) was a member of a firm or partnership which carried on business in the Colony,

and for the purposes of Part IX hereof includes a person against whom bankruptcy proceedings have been instituted in a reciprocating territory and who has property in this Colony.

Bankruptcy notices.

4. A bankruptcy notice under this Ordinance shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice—

(i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed

to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order.

Jurisdiction to make receiving order.

5. Subject to the conditions hereinafter specified if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Ordinance called a receiving order, for the protection of the estate.

Conditions on which creditor may petition.

6. (1)A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

(*a*) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to one thousand shillings, and

(*b*) the debt is a liquidated sum, payable either immediately or at some certain future time, and

(*c*) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and

(*d*) the debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, or has carried on business, in the Colony, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in the Colony by means of a partner or partners, or an agent or manager,

nor where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by any law for the time being in force relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and order on creditor's petition.

7. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

(2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on

the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

Debtor's petition and order thereon.

8. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the court.

Effect of receiving order.

9. (1) On the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2) But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Power to appoint interim receiver.

10. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to stay pending proceedings.

11. (1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding.

Power to appoint special manager.

12. (1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the official receiver may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

Advertisement of receiving order.

13. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, the court by which the order is made, and the date of the petition, shall be gazetted, in the prescribed manner.

Proceedings Consequent on Order.

First meeting of creditors.

14. As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

Meetings to be governed by rules.

15. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the first schedule to this Ordinance shall be observed.

Debtor's statement of affairs.

16. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's

assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely :—

(i) if the order is made on the petition of the debtor, within fourteen days from the date of the order;

(ii) if the order is made on the petition of a creditor, within fourteen days from the date of the order;

but the court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public Examination of the Debtor.

Public examination of debtor.

17. (1) Where the court makes a receiving order, it shall, save as in this Ordinance provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver shall take part in the examination of the debtor, and for the purpose may employ an advocate if he so desires.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Ordinance provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner and at such place as to the court seems expedient.

Composition or Scheme of Arrangement.

Compositions and schemes of arrangement.

18. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal, with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to

accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from the Colony.

(8) The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge, were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it

provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

(12) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor or provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(14) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done, under or in pursuance of the composition or scheme.

Where a debtor is adjudged bankrupt under this subsection any debt provable in other respects, which has been

contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 27 and Part V of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms, "bankruptcy," "bankrupt," and "order of adjudication" include respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part III of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication" as in the last preceding sub-section.

(19) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Effect of composition or scheme.

19. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy.

Adjudication of bankruptcy where composition not accepted or approved.

20. (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting, or any adjournment thereof by ordinary resolution, resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor, or such further time as the court may allow, the court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his creditors, and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted in the prescribed manner, and the date of the order shall, for the purposes of this Ordinance, be the date of the adjudication.

Appointment of trustee.

21. (1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the court, and the court, if satisfied with the security, shall certify that his appointment has been duly made, unless the court objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt, or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) The appointment of a trustee shall take effect as from the date of the certificate.

(4) The official receiver may be appointed the trustee by the creditors and in such case there shall be no committee of inspection, but the official receiver may do with the permission of the court all things which may be done by a trustee with the permission of the committee of inspection.

(5) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the court, and thereupon the court shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

(6) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the court.

(7) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of inspection.

22. (1) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

Qualifications of committee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications :—

(*a*) That of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(*b*) that of being a person to whom a creditor intends to give a general proxy or general power of attorney: Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

Meetings of committee.

(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

Quorum.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee. Resignation of office.

(6) If a member of the committee becomes bankrupt or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. Vacation of office.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting. Removal.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor, or other person eligible as above, to fill the vacancy. Filling a vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five. Continuing members may act.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the court on the application of the trustee. If no committee court gives consent.

23. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. Power to accept composition or scheme after bankruptcy adjudication.

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person If court approves.

as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare.

Default, etc.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section all debts, provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

Duties of debtor as to discovery and realisation of property.

24. (1) Every debtor against whom a receiving order is made, shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

To discover property.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meeting of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager or trustee, or may be prescribed by general rules, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee or any creditor or person interested.

To aid in realization.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly. Committal.

25. (1) The court may, by warrant addressed to any police officer or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances :— Arrest of debtor under certain circumstances.

(*a*) If, after a bankruptcy notice has been issued under this Ordinance, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him. After issue of bankruptcy notice.

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy. After presentataion of petition.

(*c*) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of one hundred shillings, without the leave of the official receiver or trustee. After service of petition.

Attend examination.

(*d*) If, without good cause shown, he fails to attend any examination ordered by the court:

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest is served with such bankruptcy notice.

Payment after arrest may be fraudulent preference

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Re-direction of debtor's letters.

26. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding six months, as the court thinks fit, post letters, telegrams, cablegrams, and other postal articles, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed sent or delivered by the Postmaster General, or the officers acting under him, or by any other person in charge of the transmission and receipt of telegrams and cablegrams, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

Inquiry as to debtor's conduct, dealings and property.

27. (1) The court may on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

In case of refusal.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such documents, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

Examination on oath.

(3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

Order to pay.

(4) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

Order to deliver property.

(5) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

Examination out of the

(6) The court, may, if it thinks fit, order that any person who if in the Colony would be liable to be brought before it under this section shall be examined in any other place out of the Colony.

Discharge of bankrupt.

28. (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules under this Ordinance otherwise directs, be heard in open court.

Powers of court.

(2) On the hearing of the application the court shall take into consideration a report of the official receiver of this Colony or any reciprocating territory as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect of his after-acquired property :

Provided that where the bankrupt has committed any offence under this Ordinance or any other offence connected with his bankruptcy, whether in the Colony or any

reciprocating territory, or where in any case any of the facts hereinafter mentioned are proved to have occurred either in the Colony or any reciprocating territory the court shall either—

(i) refuse the discharge; or

(ii) suspend the discharge for such period as the Court thinks proper; or

(iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or

(iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts:

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3) The facts hereinbefore referred to are—

(*a*) that the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

(*c*) that the bankrupt has continued to trade after knowing himself to be insolvent;

(*d*) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

(*e*) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(*g*) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(*h*) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;

(*i*) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*j*) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities;

(*k*) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;

(*l*) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

Certificate that bankruptcy caused by misfortune.

(4) With a view to removing any legal disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such certificate, but a refusal to grant such a certificate shall be subject to appeal.

When are assets 10s. in the pound.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to ten shillings in the pound on his unsecured liabilites, and a report by the official receiver or the trustee shall be prima facie evidence of the amount of such liabilities.

Report of official receiver.

(6) For the purposes of this section, the report of the official receiver shall be prima facie evidence of the statements therein contained.

Notice of application for discharge.

(7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

(8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

Duties of discharged bankrupt.

(9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

29. In either of the following cases, that is to say— **Fraudulent settlements.**

(i) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(ii) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

30. (1) An order of discharge shall not release the bankrupt— **Effect of order of discharge.**

(*a*) from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against any law relating to any branch of the general revenue of the Colony, or at the suit of the bailiff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Treasurer of the Colony certify in writing his consent to the bankrupt being discharged therefrom; or

(*b*) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or

(*c*) from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Power for court to annul adjudication in certain cases.

31. (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.

Effect of annulment.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt, shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

Advertisement of order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted.

Meaning of "payment in full."

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as

the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

Description of debts provable in bankruptcy.

32. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy.

Creditor with notice of act of bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

What may be proved.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

Estimate of uncertain debts.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Appeal from estimate.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

If not capable of being fairly estimated.

(6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Ordinance, be deemed to be a debt not provable in bankruptcy.

Estimation before court.

(7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may assess the value, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

Meaning of "liability."

(8) " Liability " shall, for the purposes of this Ordinance, include—

(*a*) any compensation for work or labour done;

(*b*) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;

(*c*) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual credit and set-off.

33. Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Ordinance and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debts.

34. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second schedule to this Ordinance, the rules in that schedule shall be observed.

Priority of debts.

35. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

One year's rates and taxes.

(*a*) all Crown taxes and local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next

before that date not exceeding in the whole one year's assessment;

(*b*) all Crown rents not more than five years in arrear; **Crown rents**

(*c*) all wages or salary, whether or not earned wholly or in part by way of commission, of any clerk or servant in respect of service rendered to the bankrupt during four months before the date of the receiving order, not exceeding two thousand shillings; **Clerk or servant's wages.**

(*d*) all wages of any labourer or workman not exceeding one thousand shillings, whether payable for time or for piecework in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order; **Labourers' wages.**

(*e*) all sums of money deposited by natives with the bankrupt for safe custody, whether the bankrupt held himself out as a banker or not. **Deposits by natives.**

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. **They rank equally *inter se.***

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith as far as the property of the debtor is sufficient to meet them. **To be paid forthwith.**

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: **First charge on distress.**

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

Insolvent estates of deceased persons.

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

Application of joint and separate estates in partnership bankruptcies.

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

All other debts *pari passu.*

(7) Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu.*

Surplus.

(8) If there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date of the receiving order at the rate of six pounds per centum per annum on all debts proved in the bankruptcy.

Savings.

(9) Nothing in this section shall prejudice the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

Preferential claim in case of apprenticeship.

36. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person. Alternative power of trustee.

37. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available. Landlord's power of distress in case of bankruptcy.

38. (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business, until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied. Postponement of husband's and wife's claims.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

Property available for Payment of Debts.

39. (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being Relation back to trustee's title.

committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against the judgment debtor in pursuance of section 99 of this Ordinance the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

Description of bankrupt's property divisible amongst creditors.

40. The property of the bankrupt divisible amongst his creditors, and in this Ordinance referred to as the property of the bankrupt, shall not comprise the following particulars:—

(1) Property held by the bankrupt on trust for any other person;

(2) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding three hundred shillings in the whole, except that in any case the court, having regard to the bankrupt's station in life, may in its discretion order that this allowance be increased to any value not exceeding eight hundred shillings in the whole:

But it shall comprise the following particulars:—

(*a*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*c*) all goods, being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Provisions as to second bankruptcy.

41. (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 49 of this Ordinance) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

(3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt

since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order of the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of Bankruptcy on Antecedent and Other Transactions.

Restriction of rights of creditor under execution or attachment.

42. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the bailiff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Duties of bailiff as to goods taken in execution.

43. (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding four hundred shillings, the goods of a debtor are sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the bailiff has notice, the bailiff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

(3) Where any goods in the possession of an execution debtor at the time of seizure by a bailiff are sold by such bailiff without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to such goods, and no person shall be entitled to recover against such bailiff or any other person lawfully acting under his authority, for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to such goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained that such goods were not the property of the execution debtor:

Provided that nothing in this sub-section contained shall affect the right of any claimant, who may prove that at the time of sale he had a title to such goods, to any remedy to which he may be entitled against any person other than such bailiff.

Avoidance of certain settlements.

44. (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement,

able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

Covenants in marriage settlements to settle after-acquired property.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy, under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

Transfers and payments under such covenants.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy unless the persons to whom the payment or transfer was made prove either—

(*a*) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(*b*) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(*c*) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three

months after the money or property came into the possession or under the control of the settlor :

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) " Settlement " shall, for the purposes of this section, include any conveyance or transfer of property.

Avoidance of general assignments of book debts unless registered.

45. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the law with respect to the registration of bills of sale shall apply accordingly :

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made bona fide and for value, or any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section " assignment " includes assignment by way of security and other charges on book debts.

Avoidance of preference in certain cases.

46. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three

months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Receiving order in lieu of committal.

(3) Where a receiving order is made against a judgment debtor in pursuance of section 99 of this Ordinance, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Protection of bona fide transactions without notice.

47. Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Ordinance shall invalidate, in the case of a bankruptcy—

(*a*) any payment by the bankrupt to any of his creditors;

(*b*) any payment or delivery to the bankrupt;

(*c*) any conveyance or assignment by the bankrupt for valuable consideration;

(*d*) any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely:—

(i) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Validity of certain payments to bankrupt and assignee.

48. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Ordinance, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise bona fide.

Dealings with undischarged bankrupt.

49. (1) All transactions by a bankrupt with any person dealing with him bona fide and for value, in respect of property, whether movable or immovable, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee be valid against the trustee, and any estate or interest in such property which by virtue of this Ordinance is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

For the purposes of this sub-section, the receipt of any money, security or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

Duties of bankers.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee or the official receiver.

Realization of Property.

Possession of property by trustee.

50. (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5) Subject to the provisions of this Ordinance with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

Seizure of property of bankrupt.

51. Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search warrant to any police officer or officer of the court, who may execute it according to its tenor.

Appropriation of proportion of pay or salary to creditors.

52. (1) Where a bankrupt is an officer of the army, navy or air force, or an officer or clerk or otherwise employed or engaged in the civil service of the Colony, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the head of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section, the court shall communicate with the head of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the head of the department to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary or income, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3) Nothing in this section shall take away or abridge any power of the Governor to dismiss a bankrupt.

Appropriation of income of property restrained from anticipation.

53. Where a married woman who has been adjudged bankrupt has separate property the income of which is subject to a restraint on anticipation, the court shall have power, on the application of the trustee, to order that, during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and in the exercise of such power the court shall have regard to the means of subsistence available for the woman and her children.

Vesting and transfer of property.

54. (1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Ordinance, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4) The certificate of appointment of a trustee shall for all purposes of any law in force in any part of the Colony requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

Disclaimer of onerous property.

55. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

Effect of disclaimer.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

Disclaimer of leases.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

Abandonment of right of disclaimer.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Rescission of contracts.

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

Vesting orders.

(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

Disclaimer by official receiver as interim trustee.

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

Proof for damages.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of trustee to deal with property.

56. Subject to the provisions of this Ordinance, the trustee may do all or any of the following things:—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Ordinance.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

57. The trustee may, with the permission of the committee of inspection, do all or any of the following things :—

Powers exercisable by trustee with permission of inspection.

(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same.

(2) Bring, institute, or defend any action or other legal proceding relating to the property of the bankrupt.

(3) Employ an advocate or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on.

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to allow bankrupt to manage property.

58. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

Allowance to bankrupt for maintenance or service.

59. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court.

Right of trustee to inspect goods pawned, etc.

60. Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of trustee's powers in relation to copyright.

61. Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a

share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Protection of official receiver and trustee from personal liability in certain cases.

62. Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

Distribution of Property.

Declaration and distribution of dividends.

63. (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

First dividend.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

Subsequent dividends.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

Notice of intention to declare.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed

manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

Notice of dividend.

(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends.

64. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provisions for creditors residing at a distance, etc.

65. (1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them, if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Right of creditor who has not proved debt before declaration of a dividend.

66. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of

any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Interest on debts.

67. (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

Rules to discover relation between principal and interest.

(2) In dealing with the proof of the debt, the following rules shall be observed :—

(*a*) Any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalization of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one.

(*b*) Any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realization of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

(*c*) Where the debt due is secured and the security is realized after the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

Final dividend.

68. (1) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No action for dividend.

69. No action for dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus.

70. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.

Official Receiver and Staff.

Appointment of official receiver and deputy official receivers.

71. There shall be an official receiver of debtors' estates for the Colony and as many deputy official receivers as may be required from time to time who shall have jurisdiction in such areas as may be specified. The official receiver and the deputy official receivers shall be appointed, be removable by and be under the general authority and directions of the Governor and they shall also be officers of the court. A deputy official receiver shall have the same powers, rights and duties within the area for which he is appointed as an official receiver under this Ordinance.

Status of official receiver.

72. (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) The official receiver may, for the purposes of affidavits verifying proofs, petitions, or other proceedings under this Ordinance, administer oaths.

(3) All provisions in this or any other Ordinance, referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Ordinance otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Ordinance.

Duties of official receiver as regards the debtor's conduct.

73. As regards the debtor, it shall be the duty of the official receiver—

(*a*) to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Ordinance or any enactment repealed by this Ordinance, or which would justify the court in refusing, suspending or qualifying an order for his discharge;

(*b*) to make such other reports concerning the conduct of the debtor as the court may direct;

(*c*) to take such part as he may deem fit in the public examination of the debtor;

(*d*) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Attorney General may direct.

Duties of official receiver as to debtor's estate.

74. (1) As regards the estate of a debtor, it shall be the duty of the official receiver—

(*a*) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(*b*) to authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors it appears necessary so to do;

(*c*) to summon and preside at the first meeting of creditors;

(*d*) to issue forms of proxy for use at the meetings of creditors;

(*e*) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(*f*) to advertise the receiving order, the date of the creditors' first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(*g*) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

PART V.

TRUSTEES IN BANKRUPTCY.

Official Name.

Official name of trustee.

75. The official name of a trustee in bankruptcy shall be "the trustee of the property of.....a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may, in any part of the Colony or elsewhere, hold

property of every description, make contracts, sue and be sued, enter into any engagements binding on himself, and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment.

Power to appoint joint or successive trustees.

76. (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the court.

Proceedings in case of vacancy in office of trustee.

77. (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the court, and the court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee.

Control over Trustee.

Discretionary powers of trustee and control thereof.

78. (1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution

of the creditors at any general meeting or by the committee of inspection, and any direction so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Ordinance, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to court against trustee.

79. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of official receiver over trustees.

80. (1) The official receiver shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by ordinance, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as may be deemed expedient.

(2) The official receiver may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and, if the official receiver thinks fit, he may apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the trustee.

Remuneration and Costs.

Remuneration of trustee.

81. (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the court that the remuneration is unnecessarily large, the court shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the court approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any advocate, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any advocate, or other person that may be employed about a bankruptcy.

Allowance and taxation of costs.

82. (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Ordinance or rules thereunder to be performed by himself.

Advocate trustee.

(2) Where the trustee is an advocate, he may contract that the remuneration for his services as trustee shall include all professional services.

Taxation.

(3) All bills and charges of advocates, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in case of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Delivery of bill for taxation.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after the receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

Trustee to furnish list of creditors.

83. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of fifty cents per folio of one hundred words, together with the cost of the postage thereof.

Trustee to furnish statement of accounts.

84. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the

accounts up to the date of such notice, and the trustee shall, upon the receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the court so direct.

Books to be kept by trustee.

85. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of court, personally or by his agent, inspect any such books.

Annual statement of proceedings.

86. (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the official receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The official receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Trustee not to pay into private account.

87. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Payment of money into the prescribed bank.

88. (1) A Bankruptcy Estates Account shall be kept by the official receiver with the prescribed bank, and all moneys received by him in respect of proceedings under this Ordinance shall be paid to that account.

(2) Every trustee in bankruptcy shall in such manner and at such times as the official receiver shall direct pay the money received by him to the Bankruptcy Estates Account at the prescribed bank, and the official receiver shall furnish him with a certificate of receipt of the money so paid:

Provided that—

(*a*) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the court that for any other reason it is for the advantage of the creditors that the trustee should have an account with the local bank, the court shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select;

(*b*) in any bankruptcy composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the court may, if for special reasons it thinks fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the court may direct.

(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

(4) Subject to any general rules relating to small bankrupties under section 116 of this Ordinance, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding one thousand shillings, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

89. (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' estates, the official receiver may place the same or any part thereof on fixed deposit with the prescribed bank. **Investment of surplus funds.**

(2) Whenever any money so placed on deposit is, in the opinion of the official receiver, required to answer any demands in respect of bankrupts' estates, the official receiver shall thereupon withdraw such money from fixed deposit and repay the same to the credit of the cash balance of the Bankruptcy Estates Account.

(3) All interest accruing from any money so placed on deposit shall be paid by the official receiver to the credit of a separate account entitled the Bankruptcy Contingency Fund at the prescribed bank. Where it appears that it is in the public interest to do so and that other funds are not available or properly chargeable the court may on the application of the official receiver authorise him to employ money in the Bankruptcy Contingency Fund to defray the cost in whole or in part of any of the following :—

(*a*) The prosecution of any debtor for any bankruptcy offences alleged to have been committed by him.

(*b*) The institution of proceedings and the payment of expenses of witnesses (if any) for the discovery or recovery of property belonging to any debtor.

(*c*) The institution of proceedings to set aside an alleged fraudulent preference.

(*d*) The employment of counsel in matters connected with an estate which by reason of their difficulty or other good cause cannot be dealt with by the official receiver himself.

(*e*) The employment of interpreters in cases where the court is unable to provide an interpreter.

(*f*) The payment of expenses involved in arresting a debtor and bringing him before the court.

(*g*) Any other expenditure which the court may deem fit.

The court may in its discretion order that the fund be reimbursed in whole or in part in the event of any money being recovered as a result of the expenditure so authorised.

Audit of trustee's accounts.

90. (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the official receiver an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the official receiver, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Vacation of Office by Trustee.

Release of trustee.

91. (1) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to the official receiver when he is, or is acting as, trustee, and when the official receiver has been released under this section he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office and thereupon the official receiver shall be the trustee.

(6) Where, on the release of a trustee, the official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

Office of trustee vacated by insolvency.

92. If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

Removal of trustee.

93. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the court is of opinion—

(*a*) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Ordinance; or

(*b*) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(*c*) that he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(*d*) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally;

or where, in any other matter he has been removed from office on the ground of misconduct, the court may remove him from his office.

PART VI.

CONSTITUTION, PROCEDURE AND POWERS OF COURT.

Jurisdiction.

Jurisdiction in bankruptcy.

94. The Court having jurisdiction in bankruptcy shall be the Supreme Court; provided that the Chief Justice may by order delegate all or any part of the jurisdiction of the Supreme Court in bankruptcy to any subordinate court, either generally or for the purpose of any particular case or class of cases.

Judge may exercise his powers in chambers.

95. Subject to the provisions of this Ordinance, and to general rules, a judge of the court may exercise in chambers the whole or any part of his powers.

Official receiver to make payments in accordance with directions of court.

96. Where any moneys or funds have been received by the official receiver under this Ordinance and the court makes an order declaring that any person is entitled to such moneys or funds, the official receiver shall make payment accordingly to that person.

General powers of the court.

97. (1) Subject to the provisions of this Ordinance, the court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, which may arise in any case of bankruptcy coming within its cognizance, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where default is made by a trustee, debtor, or other person, in obeying any order or direction given by the official receiver, the court may on the application of the official receiver order such defaulting trustee, debtor, or person to comply with the order or directions so given; and the court

may also, if it thinks fit upon any such application, make an immediate order for the committal of such defaulting trustee, debtor or person: Provided that the power given by this sub-section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Disqualifications of bankrupt

98. (1) Where a debtor is adjudged bankrupt, he shall be disqualified for—

(*a*) being appointed or acting as a justice of the peace; or

(*b*) being elected to, or holding or exercising the office of mayor or municipal councillor, or a member of a township authority, school committee or road board.

(2) If a person is adjudged bankrupt whilst holding the office of justice of the peace, mayor, or municipal councillor, or member of a township authority, school committee or road board his office shall thereupon become vacant.

(3) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when—

(*a*) the adjudication of bankruptcy against him is annulled; or

(*b*) a period of five years has elapsed from the date of his discharge; or

(*c*) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

Judgment Debtors.

Power to make receiving order in lieu of committal order.

99. Where application is made by a judgment creditor to the court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Ordinance, except

Part VIII thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Appeals.

Appeals in bankruptcy.

100. (1) The court may review, rescind or vary any order made by it.

(2) Orders of the court in bankruptcy matters shall, at the instance of the person aggrieved, be subject to appeal but no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

(3) Where by this Ordinance an appeal to the court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Procedure.

Discretionary power of court.

101. (1) Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in court under this Ordinance shall be in the discretion of the court.

Adjournment.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

Amendment.

(3) The court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose.

Extension of time.

(4) Where by this Ordinance, or by general rules, the time for doing any act is limited, the court may extend the time either before or after the expiration thereof upon such terms, if any, as it may think fit to impose.

Evidence.

(5) Subject to general rules, the court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or, out of the Colony, by commission.

Consolidation of petitions.

102. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change carriage of proceedings.

103. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Ordinance in the case of the petitioning creditor.

Continuance of proceedings on death of debtor.

104. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

Power to stay proceedings.

105. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

Power to present petition against one partner.

106. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to dismiss petition against some respondents only.

107. Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Property of partners to be vested in same trustee.

108. Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the same partnership shall be filed with the first-mentioned petition, and, unless the court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the court may give such directions for consolidating the proceedings as it thinks just.

Actions by trustee and bankrupt's partners.

109. Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause

against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

Actions on joint contracts.

110. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Proceedings in partnership name.

111. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

Court to be auxiliary to other British courts.

112. The court of the Colony and all the officers thereof, shall, in all matters of bankruptcy, act in aid of and be auxiliary to every British court elsewhere having jurisdiction in bankruptcy or insolvency, and an order of the court seeking aid, with a request to this court shall be deemed sufficient to enable this court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or this court could exercise in regard to similar matters within their respective jurisdiction, save that to enable the official receiver of the Colony to act as the agent of an officer of a reciprocating court or to enable an officer of this court to seek the aid of an official receiver of a reciprocating court in the manner provided in Part IX of this Ordinance it shall not be necessary for this court or any reciprocating court to make any order or send any request under this section.

Commitment to prison.

113. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and, if the gaoler of any prison refuses to receive any prisoner so committed, he shall on conviction be liable for every such refusal to a fine not exceeding two thousand shillings.

PART VII.

SUPPLEMENTAL PROVISIONS.

Application of Ordinance.

Married women.

114. (1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were feme-sole.

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

Exclusion of companies.

115. A receiving order shall not be made against any corporation or against any association or company registered under the Companies Ordinance or any enactment repealed by that Ordinance, and any legislation in substitution therefor. *Cap.* 93.

Application of Ordinance in case of small estates.

116. Where a petition is presented by or against a debtor, if the court is satisfied, by affidavit or otherwise, or the official receiver reports to the court, that the property of the debtor is not likely to exceed in value six thousand shillings, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications :—

(1) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy.

(2) There shall be no committee of inspection, but the official receiver may do, with the permission of the court, all things which may be done by the trustee with the permission of the committee of inspection.

(3) Such other modifications may be made in the provisions of this Ordinance as may be prescribed by general rules with the view of saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the debtor :

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

Administration in bankruptcy of estate of person dying insolvent.

117. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

The order.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

Property to vest in official receiver.

(3) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver, as trustee thereof, and he shall forthwith proceed to realize and distribute it in accordance with the provisions of this Ordinance:

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance, relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the court.

Application of Ordinance.

(4) With the modifications hereinafter mentioned, all the provisions of Part III of this Ordinance (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules

under sub-section (10) of this section, the following provisions, namely, section 27 of this Ordinance (which relates to inquiries as to the debtor's conduct, dealings and property), section 82 of this Ordinance (which relates to the costs of the trustees, managers, and other persons), section 116 of this Ordinance (which relates to the summary administration of small estates), and sub-section (4) of section 91 of this Ordinance so far as it relates to the effect of the release of the official receiver shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance and section 37 of this Ordinance shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

Priority of claims.

(5) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

Surplus.

(6) If, on the administration of a deceased debtor's estate any surplus remains in the hands of the official receiver or trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

Effect of notice to legal personal representative of the presentation of the petition.

(7) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; save as aforesaid nothing in this section shall invalidate any pay-

ment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

Legal personal representative may present petition.

(8) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor, and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under sub-section (10) of this section.

"Creditor."

(9) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided.

Rules.

(10) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules.

Power to make general rules. No. 3 of 1924.

118. The Rules Committee under the Civil Procedure Ordinance, 1924, with the addition of the official receiver, with the concurrence of the Governor in Council, may make general rules for carrying into effect the objects of this Ordinance.

Fees and Salaries, etc.

Fees, etc.

119. The Chief Justice, with the concurrence of the Governor in Council, may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance.

Salaries and remuneration.

120. The Chief Justice, with the concurrence of the Governor in Council, shall direct whether any and what remuneration is to be allowed to any person (other than the official receiver or his staff) performing any duties under this Ordinance, and may vary, increase, or diminish such remuneration, as he may think fit.

Evidence.

Gazette to be evidence.

121. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

122. (1) A minute of proceedings at a meeting of creditors under this Ordinance, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy.

123. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of the court or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits.

124. Subject to general rules, any affidavit to be used in the court may be sworn before any person authorised to administer oaths in the court, or before a magistrate or a justice of the peace for the district where it is sworn, or in the case of a person residing out of the Colony, before any person qualified to administer oaths in the country where he resides (he being certified to be qualified as aforesaid by a British minister or British consul, or by a notary public).

Death of debtor or witness.

125. In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by the court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Certificate of appointment of trustee.

126. A certificate of the court that a person has been appointed trustee under this Ordinance shall be conclusive evidence of his appointment.

Miscellaneous.

Computation of time

127. (1) Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the offices of the court are wholly closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where by this Ordinance the time limited for doing any act or thing is less than six days, a Sunday, public holiday and any other day on which the offices of the court are wholly closed shall be excluded in computing such time.

(3) Where by this Ordinance any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

Service of notices.

128. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

Formal defect not to invalidate proceedings.

129. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Exemption of deeds etc., from stamp duty.

130. Every deed, conveyance, assignment or other assurance relating solely to freehold or leasehold property, or to any mortgage charge or other incumbrance on, or any estate, right or interest in, any movable or immovable property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Ordinance.

For the purposes of this section " bankruptcy " shall include any proceeding under this Ordinance whether before or after adjudication and " bankrupt " shall include any debtor proceeded against under this Ordinance.

Acting of corporations, partners, etc.

131. For all or any of the purposes of this Ordinance, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his guardian or the appointed manager of his estate.

Certain provisions to bind Crown.

132. Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Unclaimed Funds or Dividends.

Unclaimed and undistributed dividends or funds under this Ordinance.

No. 1 of 1926.

133. (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Ordinance, or the Ordinance repealed by this Ordinance, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under the Deeds of Arrangement Ordinance, 1930, or under any legislation in substitution therefor, have remained or remain unclaimed or undistributed for six months after they become claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay them to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish such trustee or other person with a certificate or receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

No. 38 of 1930.

The official receiver may at any time order any such trustee or other person to submit to him an account verified by affidavit of the sums received and paid by him as aforesaid, and may direct and enforce an audit of the account.

The official receiver may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section the court shall have and, at the instance of the official receiver, may exercise, all the powers conferred by this Ordinance with respect to the discovery and realization of the property of a debtor, and the provisions of Part II of this Ordinance with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4) Where any unclaimed dividends or undistributed money paid into the Bankruptcy Estates Account in pursuance of this section shall have remained in that account for a period of two years, the official receiver shall transfer such money to the credit of the Bankruptcy Contingency Fund.

(5) Any person claiming to be entitled to any money paid in to the Bankruptcy Estates Account or the Bankruptcy Contingency Fund pursuant to this section, may apply to

the official receiver for payment to him of the same, and the official receiver, if satisfied that the person claiming is so entitled, shall make an order for the payment to such person of the sum due. If the money claimed has been paid to the credit of the Bankruptcy Contingency Fund and the said fund is insufficient to meet the sum required to be paid, the deficiency shall be met by the Treasurer out of the Public Revenue.

Any person dissatisfied with the decision of the official receiver in respect of his claim may appeal to the court.

PART VIII.

BANKRUPTCY OFFENCES.

Fraudulent debtors.

134. (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of an offence :—

Non-discovery of property.

(*a*) If he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, movable and immovable, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud.

Non-delivery of property.

(*b*) If he does not deliver up to the trustee, or as he directs, all such part of his movable and immovable property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud.

Non-delivery of books, etc.

(*c*) If he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud.

Concealment of property.

(d) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property to the value of two hundred shillings or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud.

Removal of property.

(*e*) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of two hundred shillings or upwards.

Omission in statement of affairs.

(*f*) If he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud.

Not informing trustee of false claim.

(*g*) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof.

Preventing production of books, etc.

(*h*) If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

Destruction, etc., of books, etc.

(*i*) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

False entries in books, etc.

(*j*) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

Parting with, alteration, etc., of documents.

(*k*) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs.

Accounting for property by fictitious losses, etc.

(*l*) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation,

he attempts to account for any part of his property by fictitious losses or expenses.

Obtaining property on credit by fraud.

(*m*) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same.

Obtaining property on credit on pretence of carrying on business.

(*n*) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud.

Pawning property obtained on credit.

(*o*) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud.

Obtaining consent of creditors by fraud.

(*p*) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

(*q*) If he makes default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court is authorised to make an order.

For the purpose of this sub-section, the expression "trustee" means the official receiver of the debtor's estate or trustee administering his estate for the benefit of his creditors.

(2) Any person guilty of an offence in the cases mentioned respectively in paragraphs (*m*), (*n*) and (*o*) of sub-section (1) hereof shall be liable on conviction to imprisonment for any term not exceeding five years.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (*o*) of sub-section (1) hereof, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a felony under section 295 of the Penal Code.

Undischarged bankrupt obtaining credit.

135. Where a person who has been adjudged bankrupt or insolvent in the Colony or any reciprocating territory and has not obtained his discharge—

(*a*) either alone or jointly with any other person obtains credit to the extent of one hundred shillings or upwards from any person without informing that person that he is an undischarged bankrupt; or

(*b*) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt;

he shall be guilty of an offence.

Frauds by bankrupts, etc.

136. (1) If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made—

(*a*) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud; or

(*b*) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property; or

(*c*) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him;

he shall be guilty of an offence.

(2) For the purposes of paragraph (*b*) of this section it is hereby declared that if any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property he shall be deemed to have made a transfer of or charge on his property.

Bankrupt guilty of gambling, etc.

137. (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business :—

(*a*) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or

(*b*) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(*c*) on being required by the official receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred :

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous,

the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of a receiving order.

Bankrupt failing to keep proper accounts.

138. (1) As from the expiration of a period of two years after the commencement of this Ordinance, any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of an offence, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept :

Provided that a person who has not kept or has not preserved books of account shall not be convicted of an offence under this section—

(*a*) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or insolvent or made a composition or arrangement with his creditors in the Colony or any reciprocating territory five thousand shillings, or in any other case one thousand shillings; or

(*b*) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit

or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stocktakings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

(4) Sub-sections (*i*), (*j*) and (*k*) of section 134 of this Ordinance shall, in their application to such books as aforesaid, have effect as if " two years next before the presentation of the bankruptcy petition " were substituted for the time mentioned in those sub-sections as the time prior to the presentation within which the acts or omissions specified in those sub-sections constitute an offence.

(5) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt absconding with property.

139. If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits the Colony and takes with him, or attempts or makes preparation to quit the Colony and take with him, any part of his property to the amount of four hundred shillings or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

False claim, etc.

140. If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for a term not exceeding one year.

Order by court for prosecution on report of trustee.

141. Where an official receiver or trustee in a bankruptcy reports to the court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence

under this Ordinance, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted, and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence.

Criminal liability after discharge or composition.

142. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Trial and punishment of offences.

143. (1) A person guilty of an offence under this Ordinance in respect of which no special penalty is imposed by this Ordinance shall be liable, on conviction, to imprisonment for a term not exceeding two years :

Provided that the maximum term of imprisonment which may be awarded on conviction for an offence under section 136 of this Ordinance shall be one year.

(2) Proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof, either by the official receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

Form of charge.

144. In a charge for an offence under this Ordinance, it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, the court acting under this Ordinance.

Attorney General to act in certain cases.

145. Where the court orders the prosecution of any person for any offence under this Ordinance or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Attorney General to institute and carry on the prosecution :

Provided that, where the order of the court is made on the application of the official receiver and based on his report, the official receiver may institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before a subordinate court, unless in the course thereof circumstances arise which render it desirable that the remainder of the proceedings should be carried on by the Attorney General.

Evidence as to frauds by agents.

146. A statement or admission made by any person in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence relating to frauds by agents, bankers, or factors.

PART IX.

Provisions for Reciprocity with other Territories.

Declaration of reciprocating territories and courts.

147. Where the Governor is satisfied that the legislature of any territory, the court of which having jurisdiction in bankruptcy is subordinate to the Court of Appeal for Eastern Africa, has enacted provisions for reciprocity in bankruptcy which in that territory have the like effect as the provisions contained in this Part of this Ordinance, he may by order declare such territory to be a reciprocating territory, and the court thereof having jurisdiction in bankruptcy, a reciprocating court for the purposes of this Ordinance, and as from the date of publication of such order in the Gazette the provisions of this Part of this Ordinance shall apply to all bankruptcy proceedings subsequently instituted in the declared territory against a debtor having property in this Colony.

Local effect of receiving order, etc., made by reciprocating court against debtor having property in the Colony.

148. Where a receiving order or order of adjudication or any appointment of a special manager or interim receiver has been made in any reciprocating territory in bankruptcy proceedings against a debtor having property in the Colony, such order or appointment shall, subject to the other provisions of this Part of this Ordinance, have the like effect as if it had been made in bankruptcy proceedings against the debtor in the Colony, and the debtor and his creditors shall be deemed to be in the same position and have the same rights and privileges, and be subject to the same disqualifications, restrictions, obligations and liabilities in every respect as if such order or appointment had been made under this Ordinance.

Vesting of bankrupt's local property in trustee appointed in reciprocating territory.

149. Where an order of adjudication is made by a reciprocating court, the property of the bankrupt situated in the Colony shall, by virtue of such order, vest in the person from time to time discharging the office of trustee of the property of the bankrupt in the reciprocating territory, in the same manner as if the order of adjudication and the appointment of trustee had been made in the Colony, and the superintendence of such trustee shall continue to be exercised by the committee of inspection appointed in the reciprocating territory or if there be no such committee, by the reciprocating court.

Local powers of official receiver, etc., appointed in a reciprocating territory.

150. The official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in the Colony shall, subject to the control of the court by which he is appointed, be solely responsible for conducting those proceedings, and managing the affairs of the debtor or bankrupt within the Colony and for such purposes shall, each in his respective capacity, have the same powers, rights, duties, obligations and liabilities as if he had derived his authority under this Ordinance; and in any such proceedings where by this Ordinance a debtor, creditor or other person interested is required to do any act at the direction of an official receiver, interim receiver, special manager or trustee, or is permitted by this Ordinance to move in any matter in connection with such proceedings, every such debtor, creditor or person interested shall do such act at the direction of, and in all such matters treat and negotiate with or proceed against the official receiver, interim receiver, special manager or trustee as the case may be of the reciprocating territory, except in so far as any such official may have delegated his authority to the official receiver of the Colony as his agent in the manner hereinafter provided.

Local official receiver to act as agent of official receiver, etc., of reciprocating territory.

151. Every official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in the Colony may require the official receiver of the Colony to act as his agent either in regard to any specific matter, or generally to take all such steps as may be lawful under this Ordinance for the discovery, seizure, protection, disclaimer or

realization of any property of the bankrupt situated within the Colony, and in such event it shall be the duty of the official receiver of the Colony to act accordingly.

Mode of requesting official receiver to act as agent.

152. (1) Every request to act as agent as aforesaid shall be made in the manner prescribed under this Ordinance, and shall be published as a notice in the Gazette, and upon such publication and without further formality or authority the official receiver shall, as regards the debtor or bankrupt and his property and creditors situated in the Colony and for the purposes for which he is authorised, have the same rights, powers and duties as are conferred under the provisions of this Ordinance upon an official receiver, interim receiver, special manager or trustee as the case may be. Provided that nothing herein contained shall be taken to confer on the official receiver any interest or title in any such property otherwise than as an agent as aforesaid.

(2) On the receipt of the prescribed request the official receiver shall file with the Registrar of the Supreme Court the original or a properly authenticated copy of the request, and upon such filing the court shall take judicial notice of the appointment as agent under the provisions of this Part of this Ordinance.

(3) Notwithstanding the provisions of sub-section (1) hereof, the court may, in any case in which it is made to appear to the court that immediate action is desirable, give the official receiver leave to commence discharging his duties as agent as aforesaid in any manner applicable to the circumstances, before the publication of the prescribed request, if upon the receipt of telegraphic or other information the court is satisfied that—

(*a*) bankruptcy proceedings have been instituted in a reciprocating territory against a debtor having property in the Colony; and

(*b*) the prescribed request for the official receiver to act has been signed and despatched; and further

(*c*) that the official receiver has been indemnified against all costs, charges and expenses to be incurred by him.

Any provisional authority conferred on an official receiver by the court under this sub-section may be revoked, unless

within such time as may in the circumstances seem reasonable, the prescribed request is filed in pursuance of sub-section (2) hereof.

(4) Unless the contrary intention appears, every request to act as agent sent to the official receiver of the Colony shall be deemed to permit him to delegate at his discretion the powers and duties vested in him as such agent to any deputy official receiver appointed in pursuance of this Ordinance.

Duties of official receiver acting as agent.

153. It shall be the duty of the official receiver of the Colony to remit the proceeds of the realization of the property of the bankrupt and all other money of the estate coming into his hands as such agent as aforesaid, to the person for whom he is acting, after deducting such expenses as may have been properly incurred by him; and the distribution among the creditors of all such money shall be carried out in accordance with the law of the reciprocating territory in which the adjudication order was made.

Transmission of proofs of local debts.

154. Where a receiving order or an order of adjudication has been made in a reciprocating territory and the official receiver of the Colony is acting as agent in the manner hereinbefore provided, proofs of debts contracted by the debtor in the Colony may be filed with the local official receiver in the form prescribed by the law of such reciprocating territory, and in every such case it shall be his duty to receive, deal with and forward in the manner prescribed by the rules made under this Part of this Ordinance such proofs to the official receiver or trustee, as the case may be, of such reciprocating territory.

Power of local court to make orders under sections 11 and 25.

155. If on the application of the official receiver or any creditor or other person interested, it appears to the court that bankruptcy proceedings have been instituted in a reciprocating court against a debtor having property situated in the Colony, the court may, notwithstanding that no such proceedings have been instituted in the Colony, exercise as regards the person, property and affairs of the debtor all the powers conferred by sections 11 and 25 of this Ordinance as may in the circumstances be applicable.

Limitation on powers of local court to entertain proceedings.

156. Any order, warrant or search warrant made or issued by a reciprocating court shall be enforced by the court of the Colony in the same manner in all respects as if such order, warrant or search warrant had been made or issued by itself.

Local enforcement of warrants of reciprocating court.

157. Subject to the other provisions of this section a reciprocating court shall have sole jurisdiction in all matters in or arising out of any bankruptcy proceedings taken before such court against a debtor having property in the Colony, and no court in the Colony shall entertain any suit, application or other matter arising in or out of such proceedings except—

(*a*) upon the institution of any proceedings by or against the local official receiver in respect of any matters within the scope of his authority in the capacity of agent as aforesaid;

(*b*) in the case of any civil suit or proceedings within the ordinary civil jurisdiction of such court by or against the official receiver, interim receiver, trustee or special manager of or appointed in a reciprocating territory;

(*c*) upon the institution of any proceedings affecting the property of the debtor or bankrupt situated in the Colony;

(*d*) upon the receipt of a request to act in aid of or be auxiliary to such reciprocating court;

(*e*) for the public examination of the debtor in regard only to his property situated within the Colony or his dealings with any person ordinarily resident or carrying on business in the Colony: Provided that such public examination shall not be held until the public examination before the reciprocating court shall have been concluded or adjourned *sine die*;

(*f*) for the exercise of powers under Part VIII of this Ordinance in relation only to bankruptcy offences alleged to have been committed within the Colony;

(*g*) upon the institution of any proceedings for or arising out of the enforcement or execution of any order, warrant or search warrant made or issued by a reciprocating court; or

(*h*) upon an application for the exercise of the powers conferred on the court by sections 11, 25, 26 and 52 of this Ordinance.

Concurrent bankruptcies.

158. (1) For the purposes of this section "concurrent bankruptcy proceedings" means bankruptcy or insolvency proceedings instituted concurrently against the same debtor

in any two or more reciprocating territories, one of which may or may not be in the Colony.

Where concurrent bankruptcy proceedings have been instituted affecting property in the Colony, all such property shall vest in the trustee appointed in the territory where the order of adjudication first is made; but if two or more such orders bear the same date or if for any reason no such adjudication order is made then such property shall vest in or be administered by the trustee or receiver of the territory where the receiving order first is made.

(2) In any case where concurrent bankruptcy proceedings have been instituted in the Colony and in pursuance of sub-sections (1) and (3) hereof the property of the debtor or bankrupt situated in the Colony vests in or is administered by a trustee or receiver in a reciprocating territory, the court shall rescind its receiving order and annul its order of adjudication, if made, or dismiss the petition upon such terms, if any, as the court may think fit. The rescission of a receiving order or an annulment of adjudication under this sub-section shall not invalidate any acts lawfully done by the receiver or trustee of the Colony or any other person lawfully acting under the authority of either of them.

(3) Notwithstanding the other provisions of this section in any case where concurrent bankruptcy proceedings have been instituted in the Colony the court may, after such inquiry and reference to such reciprocating courts as it deems fit, order that the property of the debtor situated in the Colony shall vest in or be administered by a trustee or receiver in the Colony or in some reciprocating territory other than that determined under the provisions of sub-section (1) hereof if, upon an application by the official receiver or any creditor or other person interested, it appears that a majority of the creditors in number and value are resident in the Colony or such other reciprocating territory, and that from the situation of the property of the debtor or bankrupt or other causes his estate and effects may be more conveniently administered, managed and distributed in the Colony or such other reciprocating territory.

(4) The court shall not make an order under sub-section (3) hereof unless it appears that a similar order has first been made by the reciprocating court of the territory wherein

and according to the law of which the property of the debtor would have been administered under the provisions of sub-section (1) hereof but for such order.

Power of official receiver, etc., of this Colony to require an official receiver in a reciprocating territory to act as his agent.

159. (1) Where a receiving order or an order of adjudication is made in the Colony against a debtor or bankrupt having property situated in a reciprocating territory and where under the provisions of this Ordinance, the property of the debtor or bankrupt is administered by or vested in the official receiver or a trustee of or appointed in the Colony, it shall be the duty of such official receiver or trustee and any interim receiver or special manager appointed in pursuance of this Ordinance to take all such steps as may be lawful in any reciprocating territory for the proper administration of any property of the debtor or bankrupt situated in such territory, and at his discretion and without further authority to request in the prescribed manner any bankruptcy official in such territory empowered in that behalf, to act as his agent either generally or for any specific purpose, and to give such directions and to publish such notices and to do all such things in the reciprocating territory as may be lawful for the administration of the estate. Unless for any reason the contrary intention is expressed, every request sent to a bankruptcy official in a reciprocating territory requiring him to act as an agent as aforesaid shall contain a consent that he may assign the powers and duties vested in him as such agent to his deputy or any officer ordinarily authorised to act for him in the reciprocating territory.

(2) Where in any proceedings mentioned in the last preceding sub-section, the official receiver, interim receiver, special manager or trustee shall have completed and despatched to a reciprocating territory a request to a bankruptcy official therein to act as his agent as aforesaid and where the circumstances of the case so require, the court may, on the application of such official receiver, interim receiver, special manager or trustee and on an undertaking to indemnify against costs and charges being given, request the reciprocating court by telegram or otherwise to authorise the bankruptcy official of such court empowered in that behalf, to act as agent until such time as the prescribed request shall arrive in the ordinary course of post.

Power to make rules under this Part.

160. (1) The Chief Justice with the approval of the Governor in Council may make rules for the purpose of carrying into effect all or any of the objects of this Part of this Ordinance, and in addition and for such purpose, shall have power to make rules extending or varying the time limited under this Ordinance or any rules made under section 118 thereof for the doing of any act or taking any proceeding, in so far as such limitation of time affects persons ordinarily resident or carrying on business in a reciprocating territory who are or may be interested in any bankruptcy proceedings in the Colony against a debtor having property in such reciprocating territory: Provided that no rules made under the powers conferred by this sub-section shall come into force until the Chief Justice shall by notice in the Gazette declare himself satisfied that the rule-making authorities in all reciprocating territories have made rules having the like effect within their respective territories.

(2) Notwithstanding the provisions of sub-section (1) hereof, the court may in respect of any particular matter exercise its general powers of extension of time under section 101 (4) of this Ordinance, in favour of a person ordinarily residing or carrying on business in a reciprocating territory, who is interested in bankruptcy proceedings instituted in the Colony against a debtor having property in such reciprocating territory.

PART X.

Repeal.

Repeal. No. 1 of 1926.

161. (1) The Bankruptcy Ordinance, 1925, is hereby repealed.

(2) The provisions of this Ordinance shall apply to and in respect of any bankruptcy proceedings instituted before the commencement of this Ordinance only if and so far as the corresponding provisions of the law repealed by this Ordinance would have applied to or in respect of such proceedings if this Ordinance had not been passed and in all other respects the said repealed Ordinance shall continue to govern the administration of estates adjudicated bankrupt before the commencement of this Ordinance.

Bankruptcy Rules, 1927, applied.

162. Unless and until the Rules Committee or the Chief Justice shall make general rules and prescribe fees under the powers conferred in sections 118 and 119 of this Ordinance the Bankruptcy Rules, 1927, made under the Ordinance

repealed by this Ordinance, and the scale of fees prescribed under section 119 of the same Ordinance are declared to be in force in the Colony and shall be read with and considered as part of this Ordinance and it shall be lawful for the court to construe the said Rules with such verbal alterations not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court, provided always that any such construction or alteration shall not be inconsistent with the provisions of this Ordinance.

THE FIRST SCHEDULE.

(Section 15.)

MEETINGS OF CREDITORS.

First meeting of creditors.

1. The first meeting of creditors shall be summoned for a day not later than twenty-eight days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in the Gazette.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon, which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Ordinance.

Subsequent meetings.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

Chairman.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

Voting.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value his security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Trustee may redeem security.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per

centum : Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

Firms.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

Power of chairman.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Proxies.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate or by any deputy official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment or of any person authorised to administer oaths in the court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

(*a*) For or against any specific proposal for a composition or scheme of arrangement.

(*b*) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection.

(*c*) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the official receiver to act in manner prescribed as his general or special proxy.

Adjournment.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

Quorum.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to such other day as the chairman may appoint, being not less than three nor more than twenty-one days later.

Minutes.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly. **Proxy-holders not to vote on certain resolutions.**

28. The vote of the trustee, or of his partner, clerk, advocate or advocate's clerk, either as creditor, or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

THE SECOND SCHEDULE.

(Section 34.)

PROOF OF DEBTS.

Proof in Ordinary Cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order. **Proofs of debts in ordinary cases.**

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured

creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors unless the court on application is satisfied that the omission has arisen from inadvertence, and in that case the court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the court may consider to be just.

6. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.

Inspection of proofs by creditors.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

Deduction of trade discounts.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

Proof by secured creditors.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

Assessment of security.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

Redemption of security.

12. (*a*) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(*b*) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be

agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(*c*) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued. **Creditor may call on trustee to redeem.**

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made bona fide on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court. **Amendment of assessment.**

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realize it, or if it is realized under the provisions of Rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Ordinance.

Proof in Respect of Distinct Contracts.

Proof in respect of distinct contracts.

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

Rent and other periodical payments.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of these periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

Interest where it is not agreed for.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

Future debts.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest

at the rate of five per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

Admission or rejection of proofs.

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Appeal.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reserve or vary the decision.

25. The court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

NO. 33 OF 1930.

Date of assent. [3RD SEPTEMBER, 1930.]

An Ordinance relating to the Sale of Goods.

Date of commencement. *By Notice.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Sale of Goods Ordinance, 1930," and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Interpretation. **2.** (1) In this Ordinance, unless the context otherwise requires—

" action " includes counterclaim and set-off;

" buyer " means a person who buys or agrees to buy goods;

" contract of sale " includes an agreement to sell as well as a sale;

" delivery " means voluntary transfer of possession from one person to another;

" document of title to goods " includes any bill of lading dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

" fault " means wrongful act or default;

" future goods " means goods to be manufactured or acquired by the seller after the making of the contract of sale;

" goods " includes all chattels personal other than things in action and money. The term includes implements, industrial growing crops, and things attached to or forming part of

the land, which are agreed to be severed before sale or under the land, which are agreed to be severed before sale or under the contract of sale;

" plaintiff " includes defendant counter-claiming;

" property " means the general property in goods, and not merely a special property;

" quality of goods " includes their state or condition;

" sale " includes a bargain and sale as well as a sale and delivery;

" seller " means a person who sells or agrees to sell goods;

" specific goods " means goods identified and agreed upon at the time a contract of sale is made;

" warranty "means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done " in good faith " within the meaning of this Ordinance when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Ordinance who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a " deliverable state " within the meaning of this Ordinance when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART I.

Formation of the Contract.

Contract of Sale.

Sale and agreement to sell.

3. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses, or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Capacity to buy and sell. Sale of necessaries to persons incompetent to contract.

4. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property: Provided that where necessaries are sold and delivered to an infant or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract.

Contract of sale, how made.

5. Subject to the provisions of this Ordinance and of any Ordinance in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the contract of the parties: Provided that nothing in this section shall affect the law relating to corporations.

Contract of sale for ten pounds or more to be in writing.

6. (1) A contract for the sale of any goods of the value of two hundred shillings or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

Executory contracts.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit

or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Acceptance.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract.

Existing or future goods.

7. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Ordinance called " future goods."

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Sale of perished goods.

8. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perished after agreement to sell.

9. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

10. (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

11. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided: Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

12. (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

"Month."

(2) In a contract of sale "month" means *prima facie* calendar month.

When condition to be treated as warranty.

13. (1) (*a*) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(*b*) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

(*c*) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any conditions to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

(2) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise. Saving as to stipulations excused by law.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is— Implication by law of

(1) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; condition as to title;

(2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods; as to quiet possession;

(3) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made. against encumbrances.

15. Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Conditions implied by description.

16. Subject to the provisions of this Ordinance and of any Ordinance in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows :— No implied warranty as to fitness, except

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. on purchase in reliance on seller's skill;

on certain sales by description.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

by usage of trade.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent therewith.

Sale by Sample.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is—

(*a*) an implied condition that the bulk shall correspond with the sample in quality;

(*b*) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of sample.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as between Seller and Buyer.

Property in unascertained goods.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property in specific or ascertained goods passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Rules for ascertaining intention as to time when property passes.

20. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer :—

Rule I. Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

Rule II. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule III. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule IV. When goods are delivered to the buyer on approval or " on sale or return " or other similar terms the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction ;

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time.

Rule V. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation by seller of right of disposal—generally;

21. (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

in case of shipped goods;

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

on transmission of documents of title with draft on buyer.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property.

22. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which

might not have occurred but for such fault: Provided also, that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

23. (1) Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Provided also that nothing in this Ordinance shall affect—

(*a*) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(*b*) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sale under voidable title.

24. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Revesting of property in stolen goods on conviction of offender.

25. (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revest in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.

Resale by seller, his agent in possession after sale.

26. (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Resale by buyer or his agent in possession after sale.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

"Mercantile Agent."

(3) In this section the term "mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.

Effect of writs of execution.

27. (1) A writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same:

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

PART III.

Performance of the Contract.

Duties of seller and buyer.

28. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery *prima facie* concurrent conditions.

29. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery.

30. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence :

Place.

Provided that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made, are in some other place, then that place is the place of delivery.

Time.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Possession of third person.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf : Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

Hour.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

Expenses.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity or description

31. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Delivery by instalments.

32. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier, as buyer's agent.

33. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

Seller's duty as to contract with carrier.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

Insurance on sea transit.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered elsewhere than at place of sale.

34. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

35. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

36. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer is not bound to return rejected goods.

37. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

38. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods : Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV.

Rights of Unpaid Seller against the Goods.

Unpaid seller defined.

39. (1) The seller of goods is deemed to be an " unpaid seller " within the meaning of this Ordinance—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Ordinance the term " seller " includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Rights of unpaid seller.

40. (1) Subject to the provisions of this Ordinance, and of any Ordinance in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods or right to retain them for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;

(*c*) a right of re-sale as limited by this Ordinance.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Unpaid Seller's Lien.

Seller's lien.

41. (1) Subject to the provisions of this Ordinance, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :—

(*a*) Where the goods have been sold without any stipulation as to credit;

(*b*) Where the goods have been sold on credit, but the term of credit has expired;

(*c*) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

Lien after part delivery.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of lien.

43. (1) The unpaid seller of goods loses his lien or right of retention thereon—

(*a*) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transitu.

Right of stoppage *in transitu*.

44. Subject to the provisions of this Ordinance, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of transit.

45. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodier.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

Mode of stoppage *in transitu.*

46. (1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller.

Effect of subsale or pledge by buyer.

47. Subject to the provisions of this Ordinance, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto :

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

Effect on sale of exercise of lien or stoppage *in transitu*.

48. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu*.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

Re-sale of perishable goods or on notice.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

Re-sale under right expressly reserved by contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

Action for price.

49. (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

Action for non-acceptance.

50. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

Measure of damages.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer.

Action for non-delivery.

51. (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

Measure of damages.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Right to specific performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty.

53. (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) maintain an action against the seller for damages for the breach of warranty.

Measure of damages.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and special damages.

54. Nothing in this Ordinance shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI.

SUPPLEMENTARY.

Variation, etc., of implied rights.

55. Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable time.

56. Where, by this Ordinance, any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Rights, etc, enforceable by action.

57. Where any right, duty, or liability is declared by this Ordinance, it may, unless otherwise by this Ordinance provided, be enforced by action.

Auction sales.

58. In the case of sale by auction :—

(1) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a seperate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid.

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person : Any sale contravening this rule may be treated as fraudulent by the buyer.

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Savings.

59. (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Ordinance contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Ordinance shall affect the enactments relating to bills of sale or any other enactment relating to the sale of goods.

(4) The provisions of this Ordinance relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

Repeal.

60. Chapter VII of the Indian Contract Act (Act IX of 1872), as applied to the Colony, is hereby repealed.

No. 34 OF 1930

[3RD SEPTEMBER, 1930.]

Date of assent.

An Ordinance to Give Effect to a Certain Convention on the Execution of Arbitral Awards and to Amend the Arbitration Ordinance.

3rd September, 1930.

Date of commencement.

WHEREAS a Convention, set out in the Schedule to this Ordinance, on the Execution of Arbitral Awards was on the 26th day of September nineteen hundred and twenty-seven signed at Geneva on behalf of His Majesty ;

AND WHEREAS it is expedient that such provisions should be enacted as will enable the said Convention to become operative in the Colony :

NOW, THEREFORE, BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as " the Arbitration (Foreign Awards) Ordinance, 1930."

Application.

2. The provisions of this Ordinance apply to any award made after the twenty-eighth day of July, nineteen hundred and twenty-four—

Cap. 18.

(*a*) in pursuance of an agreement to which the protocol set out in the Third Schedule to the Arbitration Ordinance applies ; and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Governor, being satisfied that reciprocal provisions have been made, may by proclamation declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid ; and

(*c*) in one of such territories as the Governor, being satisfied that reciprocal provisions have been made, may

by proclamation declare to be territories to which the said Convention applies,

and an award to which the provisions of this Ordinance apply is in this Ordinance referred to as a " foreign award."

Effect of foreign award.

3. (1) A foreign award shall, subject to the provisions of this Ordinance, be enforceable either by action or under the provisions of section 13 of the Arbitration Ordinance.

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(2) Any foreign award which would be enforceable under this Ordinance shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of these persons by way of defence, set off or otherwise in any legal proceedings, and any references in this Ordinance to enforcing a foreign award shall be construed as including references to relying on an award.

Conditions for enforcement of foreign awards.

4. (1) In order that a foreign award may be enforceable under this Ordinance, it must have—

(*a*) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;

(*b*) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(*c*) been made in conformity with the law governing the arbitration procedure;

(*d*) become final in the country in which it was made;

(*e*) been in respect of a matter which may lawfully be referred to arbitration under the law of the Colony,

and the enforcement thereof must not be contrary to the public policy or the law of the Colony.

(2) Subject to the provisions of this sub-section, a foreign award shall not be enforceable under this Ordinance if the Supreme Court is satisfied that—

(*a*) the award has been annulled in the country in which it was made; or

(*b*) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity, or was not properly represented; or

(*c*) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration :

Provided that, if the award does not deal with all the questions referred, the court may if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (*a*), (*b*) and (*c*) of sub-section (1) of this section, or the existence of the conditions specified in paragraphs (*b*) and (*c*) of sub-section (2) of this section, entitling him to contest the validity of the award the court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

5. (1) The party seeking to enforce a foreign award must produce—

(*a*) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it is made; and

(*b*) evidence proving that the award has become final; and

(*c*) such evidence as may be necessary to prove that the award is a final award, and that the conditions mentioned in paragraphs (*a*), (*b*) and (*c*) of sub-section (1) of the last foregoing section are satisfied.

(2) In any case where any document required to be produced under sub-section (1) of this section is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Colony.

No. 3 of 1924.

(3) Subject to the provisions of this section, rules of court may be made under section 83 of the Civil Procedure Ordinance with respect to the evidence which must be furnished by a party seeking to enforce an award under this Ordinance.

6. For the purposes of this Ordinance, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made. Meaning of "final award."

7. Nothing in this Ordinance shall— Saving.

(*a*) prejudice any rights which any person would have had of enforcing in the Colony any award, or of availing himself in the Colony of any award if this Ordinance had not been enacted; or

(*b*) apply to any award made on an arbitration agreement governed by the law of the Colony.

8. Section 22 of the Arbitration Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, is hereby amended by inserting after the word "proceed" in the last line but one of the section the words "or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred." Amendment of section 22 of *Cap.* 18. No. 7 of 1926.

SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

ARTICLE. 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

(*a*) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(*c*) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(*d*) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*, *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

ARTICLE 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the court is satisfied—

(*a*) that the award has been annulled in the country in which it was made;

(*b*) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(*c*) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*), and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a court of law, the court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4.

The party relying upon an award or claiming its enforcement must supply, in particular—

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (*d*), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5.

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

ARTICLE 6.

The present Convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

ARTICLE 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

ARTICLE 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

ARTICLE 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

ARTICLE 10.

The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th,

1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the colonies, protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

No. 35 OF 1930.

Date of assent. [3RD SEPTEMBER, 1930.]

An Ordinance relating to the Registration of Trade Marks.

Date of commencement. *By Notice.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title

1. This Ordinance may be cited as " the Trade Marks Ordinance, 1930," and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

PART I.

Interpretation.

2. In this Ordinance, unless the context otherwise requires :—

" Mark " includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

" Trade mark " means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale;

" Registrable trade mark " means a trade mark which is capable of registration under the provisions of this Ordinance;

" Register " means the register of trade marks kept under the provisions of this Ordinance;

" Registered trade mark " means a trade mark which is actually upon the register;

" Prescribed " means, in relation to proceedings before the Court, prescribed by Rules of Court, and in other cases, prescribed by this Ordinance or the Rules thereunder;

" Court " means His Majesty's Supreme Court of Kenya.

3. (1) The Governor shall appoint a fit and proper person, hereinafter referred to as the " Registrar," to be the Registrar of Trade Marks under and for the purposes of this Ordinance. **Appointment of Registrar.**

(2) The Registrar shall have a seal of such device as may be approved by the Secretary of State.

(3) Impressions of such seal or stamp shall be judicially noticed and admitted in evidence.

(4) Any act or thing directed to be done by or to the Registrar may be done by or to any officer authorised by the Governor.

REGISTER OF TRADE MARKS.

4. The Registrar shall for the purposes of this Ordinance keep a book called the " Register of Trade Marks " wherein shall be entered all registered trade marks, with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters, relating to such trade marks, as may from time to time be prescribed. **Register of Trade Marks.**

5. (1) The Register shall be divided into two parts to be called respectively " Part A " and " Part B." **Division of Register.**

(2) Part A of the Register shall comprise all trade marks entered in the Register of Trade Marks at the commencement of this Ordinance and all trade marks which after the commencement of this Ordinance may be registered under the provisions of Part A.

(3) Part B shall comprise all trade marks which may be registered under this Ordinance in accordance with the provisions for registration in Part B or which may be entered on or removed thereto under this Ordinance.

6. There shall not be entered in the Register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar. **Trust not to be entered in Register.**

7. The Register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the Register. Subject to the provisions of sections 40 and 46 of this Ordinance the validity of the original entry of any trade mark upon the Register so **Incorporation of existing Register.**

incorporated shall be determined in accordance with the law in force at the date of such entry, and such trade mark shall retain its original date; but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

Inspection of and extract from Register.

8. The Register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to such Rules as may be prescribed, and certified copies sealed with the seal of the Registrar of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS.

Particular goods.

9. A trade mark must be registered in respect of particular goods or classes of goods.

Trade marks registrable under Part A.

10. A trade mark registrable under Part A must contain or consist of at least one of the following essential particulars :—

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for the registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

For the purpose of this section " distinctive " shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered :

Provided always that any mark which has been registered as a distinctive mark in Part A of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Coloured trade marks.

11. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Court having to decide on the distinctive character of such trade mark.

If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction of registration.

12. (1) It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered in respect of particular goods or classes of goods set forth in the Schedule to this Ordinance unless such trade mark has been and is registered in the United Kingdom in respect of such goods or classes of goods.

REGISTRATION OF TRADE MARKS.

Application for registration.

13. (1) Any person claiming to be the proprietor of a trade mark desirous of registering the same in Part A must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Ordinance the Registrar may refuse such application or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose.

(3) In the case of such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the material used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make

an order determining whether, and subject to what conditions, amendments or modifications, if any, or to what limitations, if any, as to mode or place of user or otherwise, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Registration of trade marks in Part B.

14. (1) Where any mark has for not less than two years been *bonâ fide* used in the Colony upon or in connection with any goods (whether for sale in the Colony or exportation abroad), for the purpose of indicating that they are goods of the proprietor of the mark by virtue of manufacture, selection, certification dealing with or offering for sale, or where any mark has been registered in Part B of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, the person claiming to be the proprietor of the mark may apply in writing to the Registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the Register in respect of such goods.

(2) The Registrar shall consider every such application for registration of a trade mark in Part B of the Register, and if it appears to him, after such search, if any, as he may deem necessary, that the application is inconsistent with the provisions of section 12 or section 24 of this Ordinance, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered,

or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the Register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the Court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the Register.

(5) A mark may be registered in Part B notwithstanding any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

(6) The provisions of sections 19 (9), 20, 29, 30, 32, 36 and 64 of this Ordinance shall not apply in respect of trade marks to which this section applies.

Power to treat applications for registration in Part A as applications for registration in Part B.

15. If any person applies for the registration of a trade mark in Part A of the Register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the Register and deal with the application accordingly.

Removal from Register of word trade mark used as name of articles.

16. (1) Where in the case of an article or substance manufactured under any patent in force at or granted after the commencement of this Ordinance, a word trade mark registered under this Ordinance is the name or only practicable name of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law or by registration (and notwithstanding the provisions of section 46 of this Ordinance), shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive mark, and may be removed by the Court from the Register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark, and any such word on the Register may,

notwithstanding section 46 of this Ordinance, be removed by the Court from the Register on the application of any person aggrieved :

Provided that the provisions of this sub-section shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use.

(3) The power to remove a trade mark from the Register conferred by this section shall be in addition to and not in derogation of any other powers of the Court in respect of the removal of trade marks from the Register.

Address for service.

17. When an applicant for the registration of a trade mark or an agent does not reside or carry on business in the Colony he shall give the Registrar an address for service in the Colony, and if he fails to do so the Registrar may refuse to proceed with the application until such address has been given.

Advertisement of application

18. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall as soon as may be after such acceptance cause the application as accepted to be advertised in the Gazette. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted :

Provided that an application under the provisions of paragraph (5) of section 10 of this Ordinance may be advertised by the Registrar on receipt of such application and before acceptance.

Opposition to registration

19. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice the applicant shall send to the Registrar in the

prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, or what limitations as to mode or place of user or otherwise, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, or what limitations, if any, as to mode or place of user or otherwise, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the tribunal may require such party to give security for costs of the

proceedings before it relative to such opposition or appeal, and in default of such security being given may treat the opposition or appeal as abandoned.

Disclaimers.

20. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade, or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the Register, may require as a condition of its being upon the Register that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration :

Provided always that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration.

21. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the mark has been accepted in error, register the said trade mark, and the trade mark when registered shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be date of registration.

Certificate of registration

22. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Non-completion of registration.

23. Where the registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS.

Identical trade marks.

24. Except by order of the Court no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the Register with respect to such goods or description of goods or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks.

25. Where each of several persons claims to be the proprietor of the same trade mark or of nearly identical trade marks, in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or by the Court.

Concurrent user.

26. In case of honest concurrent user or of other special circumstances which in the opinion of the Court or Registrar make it proper to do so, the Court or Registrar may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods, by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise as the Court or Registrar as the case may be, may think it right to impose.

ASSIGNMENT.

Assignment and transmission of trade marks.

27. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in the United Kingdom or in any British possession or protectorate or in any foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods, and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section 26 of this Ordinance, subject to such conditions and limitations as may be imposed under that section.

Apportionment of marks on dissolution of partnership.

28. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, and to such limitations, if any, as to mode or place of user, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS.

Associated trade marks.

29. If the application be made for the registration of a trade mark identical with or so closely resembling a trade mark of the applicant already on the Register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the Register as associated trade marks.

Combined trade marks.

30. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the Register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks.

31. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) statements of the goods for which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered in a series in one registration. All trade marks so registered shall be deemed to be and shall be registered as associated trade marks.

Assignment and user of associated trade marks.

32. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks :

Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION.

Duration of registration.

33. The registration of a trade mark shall be for a period of fourteen years but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of registration.

34. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed " the expiration of the last registration."

Procedure on expiry of period of registration.

35. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the Register, subject to such conditions (if any) as to its restoration as may be prescribed.

Status of unrenewed trade mark.

36. Where a trade mark has been removed from the Register for non-payment of the fee for renewal, such trade mark shall nevertheless, for the purpose of an application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF REGISTER.

Correction of register.

37. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name—

(1) correct any error in the name or address of the person who is registered as proprietor of a trade mark;

(2) enter any change in the name or address of the person who is registered as proprietor of a trade mark;

(3) cancel the entry of a trade mark on the Register;

(4) strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of assignments.

38. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the Register of the assignment, transmission, or other instrument affecting the title. Any decision of the Registrar under this section shall be subject to appeal to the Court.

(2) Except in cases of appeals under this section and applications made under section 40 of this Ordinance, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of sub-section (1) shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

Alteration of registered trade mark.

39. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register.

40. Subject to the provisions of this Ordinance—

(1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by an entry wrongfully remaining on the Register, or by an error or defect in any entry in the Register, make such order for making, expunging, or varying such entry as it thinks fit;

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the Register;

(3) In case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section;

(4) Any order of the Court rectifying the Register shall direct that notice of the rectification be served on the Registrar in the prescribed manner, who shall, upon receipt of such notice, rectify the Register accordingly.

Trade marks registered under previous law.

41. No trade mark which is upon the Register at the commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the Register on the ground that it was not registrable under the law in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the law then in force.

Non-user of trade mark.

42. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the Register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION.

Powers of registered proprietor.

43. Subject to the provisions of this Ordinance—

(1) The person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such Register to be vested in any other person, have power to assign the same and give effectual receipts for any consideration for such assignment;

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of the proprietor of a trade mark.

44. (1) Subject to the provisions of section 46 of this Ordinance and to any limitations and conditions entered upon the Register, the registration of a person as proprietor of a trade mark in Part A of the Register shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered.

(2) The registration of a person as the proprietor of a trade mark in Part B of the Register shall be *primâ facie* evidence that that person has the exclusive right to use that trade mark, but, in any action for infringement of a trade mark entered in Part B of the Register, no injunction or other relief shall be granted to the owner of the trade mark in respect of such registration if the defendant establishes to the satisfaction of the Court that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods the subject of such user were goods manufactured, selected, certified, dealt with or offered for sale by the proprietor of the trade mark.

(3) Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except in so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration *primâ facie* evidence of validity.

45. In all legal proceedings relating to a trade mark registered under this Ordinance (including applications under section 40 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration conclusive after seven years.

46. In all legal proceedings relating to a trade mark registered under this Ordinance in Part A of the Register (including applications under section 40 of this Ordinance) the original registration of such trade mark shall after the expiration of seven years from the date of the original registration be taken to be valid in all respects unless such original registration was obtained by fraud or unless the trade mark offends against the provisions of section 12 of this Ordinance :

Provided that nothing in this Ordinance shall entitle the proprietor of a trade mark registered under either Part A or Part B to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continually used such trade mark from a date anterior to the user or registration, whichever is the earlier, of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the Register for such similar trade mark in respect of such goods under the provisions of section 26 of this Ordinance.

Unregistered trade mark.

47. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark.

Infringement.

48. In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

User of name, address or description of goods.

49. No registration under this Ordinance shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

"Passing off" action.

50. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS.

Certificate of validity in legal proceedings.

51. In any legal proceeding in which the validity of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification.

52. In any legal proceeding in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS.

Costs of proceedings before the Court.

53. (1) In all proceedings before the Court under this Ordinance the Court may award to any party such costs as it may consider reasonable and the costs of the Registrar shall be in discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

(2) In all proceedings before the Registrar, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of Court.

EVIDENCE.

Mode of giving evidence.

54. In any proceeding under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right to do so, the Registrar may (with the consent of the parties) take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce* the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an arbitrator appointed by the Court under the provisions of the Civil Procedure Rules. 1927.

Sealed copies to be evidence.

55. Printed or written copies or extracts of or from the Register, or of or from the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, purporting to be certified by the Registrar and sealed with his seal, or purporting to be certified by the Registrar under the Trade Marks Acts, 1905 to 1919, and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be evidence.

56. A certificate purporting to be under the hand of the Registrar, or of the Registrar of Trade Marks in the United Kingdom under the Trade Marks Acts, 1905 to 1919, as to any entry, matter or thing which he is authorised to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

GENERAL.

Discretionary powers.

57. In any appeal from the decision of the Registrar to the Court under this Ordinance the Court shall have and exercise the same discretionary powers as under this Ordinance are conferred upon the Registrar.

Rectification of Register.

58. (1) Any application for the rectification of the Register or the removal of any trade mark from the Register in respect of any goods which, under sections 16, 40 or 42 of this Ordinance, is to be made to the Court may, at the option of the applicant, be made in the first instance to the Registrar :

Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

(2) The Registrar may, at any stage of the proceedings, refer any such application to the Court or he may, after hearing the parties, determine the question between them, subject to appeal to the Court. .

Removal of trade marks from Part A to Part B.

(3) In any proceedings for rectification of the Register under this Ordinance the Court or the Registrar shall, in addition to the other powers conferred by this Ordinance, have power to direct a trade mark entered in Part A of the Register to be removed to Part B of the Register.

PART II.

Exercise of discretionary power of Registrar.

59. Where any discretionary or other power is given to the Registrar by this Ordinance or Rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required to do so within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar.

60. Except where expressly given by the provisions of this Ordinance or Rules made thereunder there shall be no appeal from a decision of the Registrar, but the Court, in dealing with any question of the rectification of the Register (including all applications under the provisions of section 40 of this Ordinance), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents.

61. Where by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any proceeding relating thereto, such act may under and in accordance with Rules made under this Ordinance or in particular cases by special leave of the Registrar be done by or to an agent of such party duly authorised in the prescribed manner.

Power to make rules.

62. (1) Subject to the provisions of this Ordinance the Governor in Council may make such Rules, prescribe such forms, and generally do such things as he may deem expedient—

(*a*) for regulating the practice under this Ordinance;

(*b*) for classifying goods for the purposes of registration of trade marks;

(*c*) for making or requiring duplicates of trade marks and other documents;

(*d*) for securing and regulating the publishing and selling or distributing in such manner as the Governor in Council may think fit, of copies of trade marks and other documents;

(*e*) generally, for regulating all things by this Ordinance placed under the direction or control of the Registrar.

Fees.

63. There shall be paid in respect of applications and registration and other matters under this Ordinance, such fees as the Governor in Council may from time to time prescribe.

Special trade marks.

64. Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connection with such goods, the Governor, if and so long as he is satisfied that such association or person is competent to certify as aforesaid, may, if he shall judge it to be to the public advantage, permit such association or person to register such trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor.

Offences.

65. (1) If any person makes or causes to be made a false entry in the Register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding five years.

(2) Any person who represents any trade mark as registered which is not so shall be guilty of an offence and shall be liable to a fine not exceeding ten pounds.

A person shall be deemed for the purposes of this subsection to represent that a trade mark is registered if he uses in connection with the trade mark the word " registered " or any word or words expressing or implying that registration has been obtained for the trade mark.

Royal Arms.

66. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling or profession the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person, without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and shall be liable to a fine not exceeding thirty pounds :

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

International and Colonial arrangements.

67. (1) Where any person has registered or has applied for protection for any trade mark in the United Kingdom or in any foreign state with the Government of which His Majesty may have been pleased to make any arrangement for mutual protection of trade marks, such person or his legal representative or assignee shall be entitled to registration of his trade mark in priority to other applicants; and such registration shall have the same date as the date of application for protection in the United Kingdom or foreign state, as the case may be :

Provided that—

(*a*) the application for registration is made within six months from the date of the commencement of this Ordinance or of the application for protection in the United Kingdom or foreign state; and

(*b*) nothing in the section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in the Colony.

(2) The registration of a trade mark shall not be invalidated by reason only of the use of the trade mark in the Colony during the aforesaid period of six months.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance, provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(4) The provisions of this section shall apply only in the case of the United Kingdom and of those foreign states with respect to which the Governor may by Proclamation to be published in the Gazette declare them to be applicable and so long only in the case of each of such foreign states as the Proclamation continues in force with respect to that state.

(5) Where it is made to appear to the Governor that in any British possession or protectorate or in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland or in any part of His Majesty's Dominions, satisfactory provision has been made for the protection of trade marks registered in this Colony it shall be lawful for the Governor by Proclamation to apply the provisions of this section to that possession or protectorate or territory with such variations or additions (if any) as may be stated in the Proclamation.

Provisions as to public holidays.

68. Whenever the last day fixed by this Ordinance, or by any Rule for the time being in force, for leaving any document with or paying any fee to the Registrar shall fall on Sunday or public holiday it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays if two or more of them occur consecutively.

Repeal.

69. The Registration of Trade Marks Ordinance (Chapter 89 of the Revised Edition) is hereby repealed. *Cap.* 89.

SCHEDULE.

1. (*a*) Cotton yarn.
   (*b*) Sewing cotton.
2. Cotton piece goods.
3. Cotton goods not included in other classes.
4. All metals, whether wrought, unwrought or partly wrought, and all goods composed wholly or partly of metal.

No. 36 OF 1920.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to Consolidate and Amend the Law relating to Native Liquor.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Native Liquor Ordinance, 1930." Short title.

2. In this Ordinance, unless the context otherwise requires :— Interpretation.

" Farm " means any area of land, not being land in a municipality or township or a gazetted trading centre, and not being unalienated land in a Native Reserve;

" Licensing board " means the person or body of persons authorised to grant, renew or transfer licences under this Ordinance;

" Local authority " means—

(*a*) in the case of any municipality established under the jurisdiction of a Municipal Council or a Municipal Board, the Municipal Council or the Municipal Board, as the case may be, of such municipality as constituted under the provisions of the Local Government (Municipalities) Ordinance, 1928; No. 19 of 1928.

(*b*) in the case of any other area, the District Commissioner, or such person, body of persons, or authority as the Governor may, by notice in the Gazette, appoint to be the local authority for the purposes of this Ordinance;

" Native intoxicating liquor " includes palm wine (other than tembo tamu), pombe, fermented asali, and all liquors such as are prepared by natives which contain more than one per centum by weight of absolute alcohol;

" Occupier " means the owner or lessee of a farm and includes a duly authorised agent of such owner or lessee :

Provided that in the case of unalienated Crown land and Forest Reserves the Commissioner of Lands and Assistant Land Officers and the Conservator and Assistant Conservator of Forests shall respectively be deemed to be occupiers for the purposes of this Ordinance;

" Palm wine " includes tembo tamu, tembo kali, and the juice of any palm;

" Sale " includes barter and the giving of native intoxicating liquor in lieu of or as part of wages or gratuitously as an inducement to work.

Application of Ordinance.

3. The Governor in Council may by proclamation, at the request of any local authority, apply this Ordinance to any area in the Colony, and, upon its application, this Ordinance shall come into full force and effect within the limits of such area.

Appointment of licensing boards.

4. (1) The Governor may appoint in and for any municipality, township, district or other area a licensing board for the consideration and determination of applications for or relating to the granting, renewal or transfer of licences for the manufacture and sale of native intoxicating liquor within such municipality, township, district or other area.

(2) Every licensing board so appointed shall consist of the District Commissioner as chairman and two other persons.

(3) The chairman and one other member shall form a quorum.

(4) Questions before a licensing board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the chairman shall have a second or casting vote :

Provided that no member of a licensing board shall vote upon any application in which he has any pecuniary interest.

(5) The Governor may appoint any person to act in the place of any member of a licensing board during his temporary absence from the Colony, illness, inability (whether from interest or otherwise) or unwillingness to act.

(6) The powers and duties of a licensing board shall, in areas for which no licensing board has been appointed, be exercised and performed by the District Commissioner of such area or by such other person as the Governor may appoint.

Licensing boards, when to sit.

5. (1) Licensing boards shall sit on the first Monday in December, and, at the discretion of the chairman, may sit on the first Monday in June in each year or on a date as near to those dates as may be possible, at such time and place as the chairman shall appoint, and shall consider all applications for licences of which due notice has been given.

(2) At least one month's notice of any sitting shall be given by the chairman in the Gazette.

No person to manufacture or sell without a licence.

6. (1) No person unless he holds a licence issued to him under this Ordinance shall manufacture for the purpose of sale or shall sell native intoxicating liquor, or shall, in a municipality, township or trading centre, possess or use sprouted grain, liquid yeast, or any other process for the manufacture of native intoxicating liquor, whether such liquor is for his own use or otherwise.

(2) Every licence issued under this Ordinance shall authorise the holder to manufacture and sell native intoxicating liquor in such quantities on such premises or in such village only and subject to such conditions as the licensing board shall approve and specify in the licence. In a municipality or township such licence shall be displayed in a conspicuous place in the licensed premises.

(3) There shall be payable in respect of any licence issued under this section and in respect of any transfer of any licence such fee as the Governor in Council may from time to time fix by notice in the Gazette.

Tapping of trees.

7. (1) No person, unless he holds a licence in that behalf from the District Commissioner, shall tap trees for palm wine.

(2) Such licence shall authorise the holder thereof to tap trees for palm wine in such area, within such hours and under such conditions as the District Commissioner may approve and specify on the licence.

(3) There shall be payable in respect of any licence issued under this section such fee as the Governor in Council may from time to time fix by notice in the Gazette :

Provided always that no fee shall be payable in respect of any licence granted to tap trees for palm wine intended for private consumption by the owner or his household or dependents and not for purposes of sale.

Special temporary licence.

8. (1) Notwithstanding anything in this Ordinance contained, any District Commissioner may grant a special temporary licence authorising the person named therein to sell native intoxicating liquor by retail at any place of recreation or public amusement or other assembly for the period, not exceeding three days, during which such recreation or amusement continues, subject to such restrictions and conditions as the District Commissioner shall think fit.

(2) There shall be payable in respect of any licence under sub-section (1) of this section such fee as the Governor in Council may fix by notice in the Gazette.

(3) Such special temporary licence shall specify the name of the holder, the place for which such licence is granted, the number of days and the hours during which the sale thereunder is authorised, and such restrictions and conditions as the District Commissioner may impose.

(4) The District Commissioner issuing such special temporary licence shall forthwith give notice to the police officer in charge of the district in which the place for which such licence has been granted is situate of any special temporary licence and the particulars thereof

Who may hold licences.

9. (1) No licence shall be issued under this Ordinance to any person other than persons of African extraction or of Arabian extraction born in Africa.

(2) No licence to sell native intoxicating liquor in a municipality or township shall be granted to a female.

Approved premises.

10. (1) No premises in any municipality or township shall be licensed unless such premises are approved by the licensing board and by the Medical Officer of Health and are furnished and equipped to the satisfaction of the licensing board.

(2) No licensed premises shall be used for any purpose other than that for which the licence is granted, except as an eating house or by permission of the licensing board endorsed on the licence.

(3) No licence in respect of premises on private land shall be issued unless the consent of the occupier of the land has first been obtained.

Unsuitable premises.

11. If any premises licensed under this Ordinance for the manufacture for the purpose of sale or for the sale of native intoxicating liquor shall in the opinion of the licensing board become unsuitable or shall fall into disrepair, the licensing board may suspend the licence until such premises have been made conformable to its requirements.

Latrine accommodation.

12. Any premises in any municipality or township licensed for the sale of native intoxicating liquor shall be provided with such latrine accommodation as the Medical Officer of Health, or, in the absence of a Medical Officer of Health, as the District Commissioner shall direct.

Licence not to be transferred without consent.

13. A licence granted under this Ordinance shall not be transferable from one person to another person or from one set of premises to another set of premises except with the consent in writing of the licensing board, who may refuse such consent.

No vested interest created by licence.

14. No person holding or having held a licence to sell native intoxicating liquor shall be entitled to claim a renewal of such licence as of right or to claim any compensation in respect of such licence if such licence is not renewed.

Sale on unlicensed premises and manufacture in municipality or township.

15. (1) Any person not duly licensed in that behalf who shall manufacture for the purpose of sale or shall sell native intoxicating liquor, or who in a municipality, township or trading centre shall manufacture possess or use sprouted grain, liquid yeast or any other materials or apparatus for the manufacture of native intoxicating liquor whether such liquor is for his own use or otherwise, and any licensed person who shall manufacture for the purpose of sale and shall sell native intoxicating liquor on premises other than those authorised by his licence or shall commit any other breach of the terms and conditions of his licence, shall be guilty of an offence and shall be liable on conviction before a magistrate to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

(2) In any proceedings against a person under this section, the averment that such person possessed or used sprouted grain, liquid yeast or any other process for the manufacture of native intoxicating liquor shall be sufficient without proof of such fact unless the accused prove the contrary, and

the proof that the possession or use of sprouted grain, liquid yeast or any other materials or apparatus is not for the purpose of manufacture of native intoxicating liquor shall lie upon the accused.

(3) On conviction of any person of an offence under this section the Court may, in addition to any other punishment which it may impose, order the forfeiture and cancellation of any licence issued to such person under this Ordinance, and shall order the confiscation of all native intoxicating liquor, liquid yeast, sprouted grain or other like fermenting agency and any implements or utensils used for brewing found on the premises or in the possession of such person, whether in the course of manufacture or not.

Being in possession of native intoxicating liquor off licensed premises.

16. (1) Subject to the provisions of this section, if any person is found in a municipality, township or trading centre or in any district of the Coast Province, to be in possession of any native intoxicating liquor in any place other than licensed premises, such person shall be deemed to be guilty of an offence unless he shall prove that such liquor was being transported from a licensed place of manufacture to licensed premises for the purpose of sale therein :

Provided that it shall be lawful for any person to purchase, possess or transport native intoxicating liquor if he shall have first obtained a permit from the administrative officer in charge of the district of sale or of the district in which he is so found, to purchase, possess or transport such liquor. Any such permit shall be produced on demand to any administrative officer or police officer or any person authorised thereto by an administrative officer :

Provided also that any person who shall have been granted a licence under section 7 of this Ordinance shall not require such permit to transport palm wine from the place of tapping to licensed premises.

(2) Any person who purchases any native intoxicating liquor except on licensed premises shall be guilty of an offence against this Ordinance.

(3) On the conviction of any person of an offence under this section the Court shall order the liquor in respect of which such offence is committed to be confiscated.

Manufacture or possession of intoxicating liquor on farms.

17. (1) Notwithstanding anything contained in this Ordinance, no person, whether licensed under this Ordinance or not, shall manufacture or be in possession of native intoxicating liquor on any farm without a permit in writing from the occupier of such farm. Such permit shall be in addition to and not in lieu of any licence required under this Ordinance.

(2) It shall not be lawful for any occupier to issue a permit under this section without a general or special authority in writing from the District Commissioner for the district in which the farm is situated.

(3) The District Commissioner in granting any such authority may impose such conditions as he may consider necessary for the purpose of guarding against excessive manufacture or consumption of native intoxicating liquor or of preventing a breach of the peace or disorder, and no permit shall be issued by an occupier which contravenes any of such conditions.

(4) If any person is found in possession of native intoxicating liquor on any farm such person shall be deemed to be guilty of an offence under this Ordinance, unless he shall prove that such possession was covered by a permit as prescribed by this section.

Duration of licence.

18. Save as provided in the case of special temporary licences under section 8 of this Ordinance, every licence granted under this Ordinance shall expire on the thirty-first day of December of the year in respect of which it is issued: Provided that where application has been made for the renewal of any licence, such licence shall continue in force until the decision of the licensing board has been notified to the applicant and for seven days thereafter.

Hours of sale of native intoxicating liquor in municipalities and townships.

19. (1) In any municipality or township the local authority and in any other area in the Colony the District Commissioner may prescribe, subject to approval by the Governor in Council, the days and hours during which native intoxicating liquor may be sold.

(2) If in any area the hours during which native intoxicating liquor may be sold have not been prescribed as aforesaid, no such liquor shall be sold between the hours of 8 p.m. and 8 a.m.

To whom may be sold.

20. No person who has been granted a licence under this Ordinance shall sell or supply any native intoxicating liquor :—

(*a*) To any person other than a person of African extraction or a person of Arabian extraction born in Africa;

(*b*) To any female in a municipality or township;

(*c*) To any person apparently under the age of eighteen years;

(*d*) To any drunken person;

(*e*) To any person for consumption off the premises, unless such person has in his possession a permit authorising him to purchase and possess such liquor.

Drunk and disorderly persons.

21. (1) No licensee shall allow drunkenness on his licensed premises.

(2) No licensee shall admit to his licensed premises any person who is drunk or disorderly or who carries a dangerous weapon.

(3) A licensee shall take all steps in his power to compel any drunk or disorderly person or any person who is found to be in possession of a dangerous weapon to leave the licensed premises.

(4) Any person entering or remaining on licensed premises against the orders of a licensee as provided for in this section shall be guilty of an offence.

In this section the word " licensee " shall be taken as including an employee of the licensee.

Arrest and punishment of persons found drunk.

22. Any person who is found drunk and incapable or drunk and disorderly on or near any licensed premises, or on any road or on any farm, or in any place to which the public ordinarily have access whether as of right or not, or in any place which it is a trespass for him to enter, shall be guilty of an offence, and any police officer or justice of the peace or any tribal police officer in the area or district for which he is appointed may arrest such person without a warrant: Provided that where any person is arrested under this section by

a justice of the peace he shall with all practicable speed be either handed over to the police or brought before a magistrate to be dealt with according to the law.

Employment of females in connexion with the sale.

23. No female shall be employed in connection with the sale of native intoxicating liquor on licensed premises in a municipality or township, or, except with the special permission of the licensing board, in any other area. Such permission shall be endorsed on the licence.

Power to search licensed premises and inspect licences.

24. (1) Any police officer may enter any premises licensed under this Ordinance at any time when he has reasonable grounds for believing that native intoxicating liquor is being sold on such premises contrary to the provisions of this Ordinance, and if cause be discovered may take into custody the licensee and all his servants and all persons taken into custody shall be brought before a magistrate as soon as possible, and such police officer may take possession of all liquor, liquid yeast, sprouted grain or other like fermenting agency and any implements or utensils used for brewing found on such premises and upon conviction all liquor, liquid yeast, sprouted grain or other like fermenting agency and any implements or utensils used for brewing found therein shall be confiscated.

(2) Any magistrate or police officer of or above the rank of an assistant sub-inspector or European police constable in charge of an out-station or any other person authorised thereto by a magistrate shall have power to inspect any premises licensed under this Ordinance and to demand and inspect any licence issued under this Ordinance.

(3) The powers conferred on police officers by subsection (1) of this section shall be exercisable by tribal police officers in respect of any premises licensed under this Ordinance in the district or area for which they are appointed.

Power to search unlicensed premises.

25. Any magistrate, justice of the peace, or police officer of or above the rank of European police constable or assistant sub-inspector, and any other police officer or tribal police officer having written authority from a magistrate, a justice of the peace or an officer in charge of a police station, or any other person having written authority from a magistrate, may at any hour enter any unlicensed premises in which he suspects that native intoxicating liquor is being sold or kept in contravention of this Ordinance, and may, if cause be discovered,

take into custody all persons found therein and may take possession of all liquor, liquid yeast, sprouted grain or other like fermenting agency and any implement or utensils used for brewing found therein; and all such persons shall be brought before a magistrate and upon conviction of any of them or if it is proved to the satisfaction of the magistrate that such liquor was being sold or otherwise kept in contravention of this Ordinance, all such liquor shall be confiscated.

Evidence.

26. In any proceeding relating to any offence under this Ordinance it shall not be necessary to show that any money actually passed or that any native intoxicating liquor was actually consumed if the Court hearing the case be satisfied that a transaction in the nature of a sale actually took place or that any consumption was about to take place and proof of consumption or intended consumption of native intoxicating liquor in licensed premises by some person other than the occupier or his servant in such premises shall be evidence that such liquor was sold to the person consuming or about to consume the same by the holder of such licence.

Explanation of Ordinance to licensee.

27. When any licence has been granted under this Ordinance, the District Commissioner issuing such licence shall have the provisions of this Ordinance fully explained to the licensee and on signing such licence the District Commissioner shall certify on the same that the provisions have been so explained.

Application by local authority for exclusive right to manufacture and sale.

28. (1) Notwithstanding anything to the contrary contained in this Ordinance, the Governor in Council may at the request of a local authority in charge of any area declare, by order in the Gazette, that the right to manufacture and/or sell and supply native intoxicating liquor in such area is vested exclusively in the local authority, and thereupon such local authority may establish breweries and canteens or hostels for the purpose of manufacture and/or sale of native intoxicating liquor.

(2) Such local authority shall not be required to apply for any licence under this Ordinance in respect of any brewery, canteen or hostel so established.

(3) All breweries, canteens or hostels so established shall be registered in a register to be kept by the District Commissioner of the district.

(4) From and after the date of any order under sub-section (1) hereof no further licences shall be granted under this Ordinance in respect of any premises within the area within which the local authority is authorised to establish breweries, canteens or hostels, and no licence existing at the date of such order shall be renewed or transferred.

Inspection of breweries, canteens or hostels established by local authority.

29. (1) Any officer duly appointed for that purpose by the Governor shall at all reasonable times have the right to enter and inspect any brewery, canteen or hostel established by a local authority for the purpose of—

(*a*) ensuring that good order and proper standards of comfort and cleanliness are maintained;

(*b*) ensuring that proper books of accounts are kept by the local authority in connection with the manufacture for the purpose of sale or sale of native intoxicating liquor and for the purpose of examining and auditing the same; and

(*c*) inquiring into any complaints against the proper conduct of the premises,

and the local authority shall afford all reasonable facilities and assistance to such officer whilst engaged in the foregoing duties.

(2) Such officer shall transmit a written report of any such inspection provided in sub-section (1) of this section to the Chief Native Commissioner as to the facts ascertained by such inspection and a copy of such report shall be transmitted to the local authority concerned.

Power of Governor where local authority fails to maintain satisfactorily any brewery, etc.

30. If at any time it shall appear that any local authority has failed to maintain to the satisfaction of the Governor any brewery, canteen or hostel, the Governor may direct, by order in the Gazette, that all powers, duties and authorities conferred under this Ordinance on such local authority shall be temporarily transferred to and vested in the District Commissioner or any other suitable officer who shall exercise all such powers and authorities on behalf of the local authority.

Profits to be expended on native projects.

31. All profits accruing to a local authority from the manufacture for purpose of sale and sale of native intoxicating liquor shall be expended in such ways and on such projects on behalf of the natives resident in the area controlled by such local authority as may to the Governor seem best and expedient.

Obstructing or hindering licensing boards or officers an offence.

32. Any person who contravenes any provision of this Ordinance or obstructs or hinders a licensing board or any member thereof or any officer acting in the lawful exercise of any power or performance of any duty conferred or imposed upon him or them by this Ordinance shall be guilty of an offence against this Ordinance.

Offences cognizable to Police.

33. All offences against this Ordinance shall be cognizable to the police.

General penalty for offences.

34. Any person who is guilty of any offence against this Ordinance or against any Rule made thereunder for which no penalty is expressly provided shall be liable, on conviction before a magistrate, for every such offence, to a penalty not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months, or to both.

Power to make Rules.

35. The Governor in Council may make Rules for the purposes of—

(1) Confiscation of any liquor manufactured or being manufactured or kept in contravention of this Ordinance and of all instruments and utensils appertaining thereto;

(2) Manufacture for the purpose of sale or for the sale of native intoxicating liquor by any local authority and the management and control of the breweries, canteens or hostels of such local authority;

(3) Taking of samples and for the analysis of native intoxicating liquor manufactured for sale or sold by a local authority or any other licensed persons;

(4) Prohibition of the manufacture for the purpose of sale or sale by any person of any native intoxicating liquor exceeding the strength of 7.5 per centum by weight of absolute alcohol;

(5) Providing of co-operative arrangement between local authorities for the manufacture for the purpose of sale or sale of native intoxicating liquor;

(6) Fixing of any fees to be charged for services rendered in connexion with this Ordinance;

(7) Generally for the better carrying into effect of the purposes of this Ordinance.

36. Nothing in this Ordinance shall be deemed to override the provisions of the Native Authority Ordinance or any Ordinance amending or replacing the same. **Saving of Native Authority Ordinance.**

37. The Native Liquor Ordinance (Chapter 133 of the Revised Edition), as amended by the Native Liquor (Amendment) Ordinance, 1927, and the Native Liquor (Amendment) Ordinance, 1928, is hereby repealed. **Repeal.** *Cap.* 133. No. 19 of 1927. No. 18 of 1928.

No. 37 OF 1930.

Date of assent. [3RD SEPTEMBER, 1930.]

An Ordinance to Consolidate and Amend the Law relating to Prisons, to Provide for the Organization, Discipline, Powers and Duties of the Prison Officers, and for matters incidental thereto.

Date of commencement. *By Notice.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Prisons Ordinance, 1930 ", and shall come into force on such date as the Governor may, by notice in the Gazette, appoint.

Interpretation. **2.** In this Ordinance, unless the context otherwise requires—

" civil prisoner " means any prisoner other than a criminal prisoner;

" Commissioner " means the Commissioner of Prisons and includes an Assistant Commissioner of Prisons;

" convicted criminal prisoner " means any criminal prisoner under sentence of a court or court martial and includes a person detained in prison under the provisions of sections 157 to 162 of the Criminal Procedure Code;; No. 11 of 1930.

" criminal prisoner " means any prisoner duly committed to custody under a writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court martial;

" European " means a person of European origin or descent;

" native " means any native of Africa not of European or Asiatic extraction, but includes a Swahili and a Somali;

" prison " means any prison declared a prison under section 3 and includes a temporary prison;

" prison officer " means any officer of the prisons;

" prisoner " means any person, whether convicted or not, under detention in any prison;

" prohibited article " means any article the introduction or removal of which into or out of a prison is prohibited by this Ordinance;

" subordinate officer " means a prison officer below the rank of matron and includes any person temporarily employed under section 38 of this Ordinance;

" superintendent " means a superintendent of prisons, and includes an assistant superintendent, and in prisons where there is no superintendent includes a chief officer.

ESTABLISHMENT OF PRISONS.

Establishment of prisons.

3. (1) The Governor may by notice declare any building in the Colony to be a prison under this Ordinance, and may in like manner declare that any such prison shall cease to be a prison for the purpose of this Ordinance.

(2) The buildings which at the commencement of this Ordinance are in use as prisons, shall each of them be a prison within the meaning of this Ordinance.

Temporary prisons.

4. Whenever—

(*a*) it appears to the Commissioner that the number of prisoners in any prison is greater than can be conveniently kept therein, and that it is not convenient to transfer the excess number to some other prison; or

(*b*) from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for temporary shelter and safe custody of any prisoners,

provision shall be made as the Commissioner, with the approval of the Governor, may direct for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison, and every such temporary prison shall be a prison for the purposes of this Ordinance.

PRISON OFFICERS.

Application of Ordinance to existing prison officers.

5. All the provisions of this Ordinance and of all orders or regulations which may at any time be made in pursuance thereof shall extend to all persons who at the commencement of this Ordinance shall be serving as prison officers under the provisions of any previous Ordinance relating to the prison officers as if such persons had been appointed under this Ordinance, and service under any such previous Ordinance, shall, for the purposes of this Ordinance, be deemed to be service under this Ordinance.

Prison officers.

6. The prison officers shall, unless otherwise ordered by the Governor, consist of the following ranks :—

European officers :

Commissioner,
Assistant Commissioners,
Superintendents,
Assistant Superintendents,
Chief Officers,
Technical Instructors,
Matrons.

Subordinate Officers :

Chief Warders,
Sergeant Warders,
Corporal Warders,
Lance-Corporal Warders;
Warders,
Female Warders.

Appointment of prison officers.

7. (1) European officers shall be appointed by the Governor with the approval of the Secretary of State and in such manner as the Secretary of State may direct :

Provided that in the absence of such directions such officers shall be appointed in a similar manner to other officers in the service of the Colony.

(2) Subordinate officers shall be appointed by the Commissioner subject to the provisions of this Ordinance and of such rules as may be made thereunder.

POWERS AND DUTIES OF PRISON OFFICERS.

General powers of Commissioner.

8. (1) The Commissioner shall, subject to the orders and directions of the Governor, have the administrative command, superintendence, control and direction of the prisons and prison officers of the Colony, and, subject to the provisions of this Ordinance and of such rules as may be made thereunder, may make such appointments, promotions, transfers and reductions in ranks and grades of subordinate officers as he may see fit.

(2) The Commissioner may, subject to the provisions of this Ordinance and to the orders and directions of the Governor, from time to time frame orders and regulations for the observance of all prison officers and may also frame orders for the general government of such persons in relation to their enlistment, discharge, training, arms and accoutrements, clothing and equipment, places of residence, classification and particular services, as well as their distribution and inspection, and may also frame such other orders and regulations relative to the said prison officers as he may deem expedient for preventing neglect or abuse, and for rendering such prison officers efficient in the discharge of their duties and for promoting discipline.

Commissioner to inspect prisons.

9. The Commissioner shall periodically visit and inspect or cause to be visited and inspected all prisons in the Colony.

Assistant Commissioner to exercise powers of Commissioner.

10. Any act or thing which may be done, ordered or performed by the Commissioner may, subject to the orders and directions of the Commissioner, be done, ordered or performed by the Assistant Commissioner.

Duties of superintendents.

11. Every superintendent in charge of a prison shall supervise and control all matters in connection with the prison to which such superintendent is appointed, and shall be responsible to the Commissioner for the conduct and treatment of the prison officers and prisoners under his control. and for the due observance by prison officers and prisoners of the provisions of this Ordinance and for all rules and orders issued thereunder.

Powers and duties of prison officers.

12. Every prison officer shall exercise such powers and perform such duties as may be prescribed, and shall obey all

lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Prisons Department.

Prison officers not to be concerned with private employment nor to receive gratuities.

13. (1) No prison officer shall be concerned in any employment not connected with the Government, or have any interest, direct or indirect in any contract for the supply of goods to the prison.

(2) No prison officer shall receive any fee or gratuity from, or have any business dealings with prisoners or with the friends of prisoners or with visitors to prisoners.

Use of arms against any prisoner in case of an outbreak or attempt to escape.

14. It shall be lawful for any prison officer to use his weapons against any prisoner when such prisoner—

(1) is escaping or attempting to escape;

(2) is engaged in any combined outbreak or in any attempt to force or break open the outside door or gate or enclosure wall of the prison, an officer may continue to use such weapons so long as such combined outbreak or attempt is actually prosecuted;

(3) is using violence to any prison officer or other person :

Provided that resort shall not be had to the use of any such weapons—

(*a*) as authorized under paragraph (1) of this section unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape nor unless such officer shall give a warning to such prisoner that he is about to use the weapons against him;

(*b*) authorized under paragraph (3) of this section unless such officer has reasonable ground to believe that the prison officer or other person is in danger of life or limb, or that other grievous bodily harm is likely to be caused to him :

Provided further that no prison officer shall, in the presence of his superior officer, use his weapons against a prisoner as authorized under paragraphs (1) and (2) of this section except under the orders of such superior officer :

And provided further that the use of weapons under this section shall be as far as possible to disable and not to kill.

Prison officers may be deemed police officers in certain cases.

15. For the purpose of conveying any person to or from a prison, or for the purpose of apprehending any person who may have escaped from a prison or who may have escaped while being conveyed to or from a prison, every prison officer while engaged in any such duty shall have all the powers, protections and privileges of a police officer.

Prison officers not to enter cells at night.

16. Except in the case of sickness or emergency it shall be unlawful for a prison officer to enter a prisoner's cell at night unless accompanied by another prison officer.

Male officer not to enter cell where females are confined.

17. No male prison officer shall enter or remain in a cell in which female prisoners are confined unless accompanied by a matron or female warder.

Failure to deliver up equipment on ceasing to be a prison officer.

18. Any subordinate officer having ceased to be a prison officer under this Ordinance, who shall not forthwith deliver up the clothing, arms, ammunition and equipment which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds, or to imprisonment for a period not exceeding six months, or to both.

Apprehension of deserters.

19. Upon reasonable suspicion that any person is a deserter from the prison service any prison officer or other person may apprehend him without warrant, and forthwith bring him before a magistrate of the district wherein he was found; and upon conviction of being a deserter such person shall be liable to imprisonment for a period which may extend to two years and shall be liable to a fine not exceeding fifty pounds.

MEDICAL OFFICERS.

Appointment of medical officers.

20. The duties of the medical officer of a prison shall be performed by such of the medical officers of the Government as the Director of Medical and Sanitary Services may appoint.

Duties of medical officers.

21. (1) Subject to the control of the Commissioner, the medical officer shall have the general care of the health of the prisoners and shall report to the Commissioner, and make

known to the superintendent any circumstance connected with the prison or the treatment of the prisoners, which at any time appears to him to require consideration on medical grounds.

(2) The medical officer shall examine every prisoner on admission and prior to discharge, and shall record his state of health and such facts connected therewith as may be prescribed.

(3) The medical officer shall examine daily every prisoner in solitary confinement or hospital, or reported to him as being sick.

(4) The medical officer shall, on the death of any prisoner, record in the register the following particulars so far as they can be ascertained, namely—

(*a*) the day on which the deceased first complained of illness, or was observed to be ill;

(*b*) the labour, if any, on which he was engaged on that day;

(*c*) the scale of his diet on that day;

(*d*) the day on which he was admitted to hospital;

(*e*) the day on which the medical officer or his subordinate was first informed of the illness;

(*f*) the nature of the disease;

(*g*) when the deceased was last seen before death by the medical officer or his subordinate;

(*h*) when the prisoner died, and (in cases where a post-mortem examination is made) an account of the appearance after death, together with any special remarks that may appear to the medical officer to be required.

VISITING JUSTICES.

Visiting justices.

22. (1) The Governor may from time to time appoint any fit and proper persons to be visiting justices for each prison.

(2) Members of the Executive Council and Judges of the Supreme Court shall be *ex officio* visiting justices of all prisons in the Colony. Every Provincial Commissioner shall be an *ex officio* visiting justice of all prisons in his province.

(3) An *ex officio* visiting justice may at any time visit any prison and an appointed visiting justice may at any time visit the prison to which he is appointed.

(4) Any visiting justice may—

(*a*) call for all books, papers, and records relating to the management and discipline of the prison;

(*b*) visit every ward, yard, cell and see every prisoner in confinement;

(*c*) inspect and test the quality and quantity of prisoners' food; and

(*d*) ascertain, so far as possible, that the rules and regulations are adhered to, and

(*e*) if a male, exercise any of the powers conferred by sections 58 and 59 of this Ordinance.

(5) Women visiting justices may be appointed only for that part of each prison which is set aside for the detention of female prisoners.

(6) On the completion of the visit, every visiting justice shall enter in a book to be kept for such purpose such remarks, suggestions or recommendations as he may deem fit to make.

(7) Every visiting justice other than a woman visiting justice shall, for the purpose of this Ordinance, have power to summon witnesses and to administer oaths.

ADMISSION AND CONFINEMENT OF PRISONERS.

Admission of prisoners.

23. (1) No person shall be admitted into a prison, unless accompanied by a remand warrant, a warrant or order of detention or a warrant of conviction or of committal:

Provided that the child of a female prisoner may be admitted into a prison with its mother if it is at the breast and less than eighteen months old.

(2) The superintendent shall verify that the prisoner is the person named in the warrant or order, and that such warrant or order bears the signature of the proper authority and in all other respects complies with the requirements of law.

Medical examination of prisoner on admission.

24. Every prisoner shall, as soon as possible after his admission, be separately examined by the medical officer, who shall record the state of health of the prisoner, and such other particulars as may be prescribed, and until so examined such prisoner shall so far as is possible be kept apart from other prisoners

Search of prisoner on admission.

25. (1) Every prisoner shall be searched on admission and at such times subsequently as may be prescribed, and all prohibited articles shall be taken from him.

(2) A female prisoner shall be searched by female officers.

Particulars to be recorded.

26. Upon the admission of any person to prison the superintendent shall cause to be recorded such particulars regarding such person as may be prescribed.

Prisoner's money and other effects to be kept in custody by superintendent.

27. (1) All money, clothes or other effects brought into the prison by any prisoner, or sent to the prison for his use, which he is not allowed to retain, shall be placed in the custody of the superintendent, who shall keep an inventory of them, and all such property shall be returned to such prisoner when he is released.

(2) In any case where clothes of such prisoner are so old, worn-out or filthy as to be useless or not capable of further use the Superintendent may order the same to be destroyed, and in such case, on the release of such prisoner, the superintendent may give him clothing suitable to his position in life.

(3) The superintendent may refuse to take into prison any property of a prisoner which by reason of its bulk or excessive quantity cannot be conveniently stored in the prison.

Separation.

28. (1) Male and female prisoners shall be confined in separate parts of the prison in such manner as to prevent their seeing or conversing or holding any intercourse with each other.

(2) The prisoners of each sex shall, as far as the prison accommodation renders it practicable, be divided into distinct classes, namely—

(*a*) prisoners awaiting trial shall be kept apart from convicted prisoners;

(*b*) persons under sixteen years of age, from adults;

(*c*) civil prisoners from criminal prisoners;

(*d*) Europeans from Non-Europeans;

(*e*) Asiatics from natives;

(*f*) first offenders from recidivists.

Certain prisoners may be confined in irons.

29. Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoner) for the safe custody of any prisoner

that he should be confined in irons, he may so confine him in accordance with such rules as may be prescribed.

CUSTODY AND REMOVAL OF PRISONERS.

Prisoners in legal custody of superintendent.

30. Every prisoner confined in any prison shall be deemed to be in the legal custody of the superintendent thereof. Every prisoner shall be subject to prison discipline and regulations during the whole time of his imprisonment, whether he is or is not within the precincts of any prison.

Removal of prisoners from one prison to another.

31. The Commissioner may by any general or special order direct that any person in prison under sentence of any court for an offence committed by him be removed to any other prison, and whenever any prisoner is removed to any other prison than that named in the warrant or order under which he may have been imprisoned, the said warrant or order, together with an order of removal, either endorsed on the warrant or order, or separate therefrom, shall be sufficient authority for the removal of such prisoner to the prison named in the order of removal, and his detention therein, and for carrying out the sentence described in the warrant or order of imprisonment, or any part thereof which may remain unexecuted.

Removal of prisoners in case of infectious diseases.

32. In case of a contagious or infectious disease occurring in any prison, it shall be lawful to remove any of the prisoners from such prison to another place although such place may not have been declared a prison under this Ordinance, and such removal may be made in pursuance of an order under the hand of the Governor, or, in case of emergency, of the superintendent or of any of the visiting justices of such prison, and such place shall be deemed during the continuance of any prisoner therein to be a part of the prison from which such prisoner was so removed, and when such disease shall have ceased any prisoners so removed from any prison shall be taken back to the prison whence they were removed, if still liable to be confined therein.

Removal of lunatic prisoners.

33. If any prisoner shall become or be found to be of unsound mind in any prison the superintendent shall forthwith report to the medical officer and the medical officer shall visit and inquire into the state of mind of such prisoner, and if the medical officer shall sign a certificate with respect to such prisoner according to the form in the schedule, the superintendent shall forward a copy of such certificate to the

Colonial Secretary and it shall be lawful for the Colonial Secretary, by order in writing under his hand directed to the superintendent of such prison, to order that such prisoner be forthwith removed to any fit place for the custody and treatment of lunatics, which may from time to time be appointed by the Governor for that purpose either within any prison or elsewhere. Any person so removed shall remain in such place until it shall be certified by a medical officer in the service of the Government that such prisoner has become of sound mind whereupon he shall by order of the Colonial Secretary be redelivered into the custody of the superintendent of such prison if still liable to be confined there, and if not so liable released.

Removal of sick prisoners to hospital.

34. In case of the serious illness of a prisoner confined in a prison in which there is not suitable accommodation for such prisoner, any magistrate may, on the certificate of a medical officer, make an order for his removal to a Government hospital. In case of emergency such removal may be made by a superintendent on the certificate of a medical officer.

Monthly report by medical officer.

35. So long as any prisoner who shall have been removed to any hospital under the provisions of the last preceding section shall remain therein he shall be deemed to be in lawful custody. The medical officer of the hospital shall, at the end of every month, transmit to the superintendent a certificate signed by him that it is in his opinion necessary that such prisoner should remain in the hospital.

Power to convey prisoners back to prison.

36. So soon as, in the opinion of the medical officer in charge of any hospital, it is no longer necessary that any prisoner who shall have been removed to the said hospital remain therein, he shall transmit to the superintendent a certificate stating that such necessity has ceased, and thereupon the superintendent shall forthwith cause such prisoner to be brought to the prison if he is still liable to be confined therein.

Officers to take precautions to prevent escapes.

37. Every precaution shall be taken by the medical officers and other officers of hospital to prevent the escape of any prisoner who may at any time be under treatment therein, and it shall be lawful for the said officers to take such measures for preventing the escape of any such prisoner as shall be necessary :

Provided that nothing be done under authority hereof which in the opinion of the medical officers is likely to be prejudicial to the health of such prisoner.

Measures for further security of prisoner in hospital.

38. Where in any case from the gravity of the offence for which any prisoner may be in custody or for any other reason the superintendent considers it to be desirable to take special measures for the security of such prisoner while under treatment in a hospital, it shall be lawful for him to give such prisoner into the charge of fit and proper persons, not being less than two in number, one of whom at the least shall always be with such prisoner day and night and such persons shall be vested with full power and authority to do all things necessary to prevent such prisoner from escaping, and shall be answerable for his safe custody until such time as he is handed over to the superintendent on his discharge from hospital or until such time as his sentence expires, whichever may first occur.

LABOUR OF PRISONERS.

Labour.

39. (1) Every prisoner under sentence of imprisonment with hard labour or rigorous imprisonment may be kept to labour within or without the precincts of any prison in any part of the Colony, and in any employment that may be prescribed.

(2) Prisoners sentenced to imprisonment without hard labour or to simple imprisonment may be given light employment.

(3) Female prisoners shall not be employed outside the prison, except on the recommendation of the medical officer, and then only on such labour as is suitable for women.

(4) All prison labour shall be under the supervision of the superintendent.

REMISSION OF SENTENCES.

Remission.

40. (1) Every criminal prisoner under sentence of imprisonment for six months or more may after the completion of six months' imprisonment earn a remission of one-seventh of the remaining period of his sentence by industry, accompanied by good conduct.

(2) For the purpose of giving effect to the provision of sub-section (1) each prisoner on admission shall be credited with the full amount of remission to which he would be entitled, and shall only lose such remission as a punishment for idleness, lack of industry or other offence against prison discipline.

(3) On the recommendation of the Commissioner, the Governor may grant a further remission on special grounds, such as exceptional merit or permanent ill-health.

Life sentence to be considered at the end of fifteen years.

41. The sentence of a prisoner sentenced to imprisonment for life shall be specially considered at the end of fifteen years with a view to the release of such prisoner and the Governor shall give such directions in the matter as he shall think fit.

LICENCES TO PRISONERS TO BE AT LARGE.

Licences to prisoners to be at large.

42. The Commissioner may grant to any prisoner under sentence of imprisonment for a term of three years or upwards who has completed two-thirds of any such sentence and has been of good behaviour while undergoing his sentence a licence to be at large in the Colony or in such part thereof as in such licence shall be specified and it shall be lawful for the Commissioner to revoke or alter such licence at his pleasure :

Provided that no such licence shall be granted—

(*a*) to any prisoner sentenced to imprisonment for life; or

(*b*) to any prisoner who previously to the sentence he is undergoing, has been sentenced to imprisonment for any period exceeding six months.

Legal effect of a licence to be at large.

43. So long as such licence to be at large shall continue in force, the person to whom the same has been granted shall not be liable to imprisonment by reason of his sentence.

Form and conditions of licence to be at large.

44. Every licence to be at large shall be in such form as shall be prescribed and shall be granted subject to the following conditions :—

(*a*) the finger prints of the holder of the licence shall be impressed thereon, and such holder shall preserve his licence and shall at all times produce it on demand when called upon by a magistrate or police officer to do so;

(*b*) the holder of such licence shall abstain from any violation of the law;

(*c*) the holder of such licence shall not habitually associate with notoriously bad characters such as reputed thieves, housebreakers, receivers of stolen property and the like;

(*d*) the holder of such licence shall not lead an idle or dissolute life without visible means of earning an honest livelihood;

(*e*) the holder of such licence shall at the time of his discharge from prison inform the superintendent of the prison as to the place where he intends to reside and shall with all convenient speed proceed to such place and shall within forty-eight hours of arrival at such place report himself personally unless prevented by unavoidable cause to the officer in charge of the nearest police station of the district wherein such place is situate;

(*f*) the holder of such licence shall, unless prevented by unavoidable cause, thereafter once in every month report himself personally to the officer in charge of the nearest police station of the district in which he is residing and shall, unless prevented by unavoidable cause, on every change of residence within the same district notify, either personally or by letter, such officer in charge as aforesaid, and, on every change of residence from one district to another shall, unless prevented by unavoidable cause, give forty-eight hours' notice, either personally or by letter to such officer in charge of the police station of the district he is leaving, of his intention to leave, and so far as is practicable of his exact future address; and shall, unless prevented by unavoidable cause, within forty-eight hours of arrival at his destination within the new district where he intends to reside, report himself personally to the officer in charge of the nearest police station in such district;

(*g*) any other conditions which may be prescribed.

Penalty on breach of conditions of a licence or other criminal offences.

45. If the holder of a licence to be at large granted under the provisions of this Ordinance is guilty of any offence against this Ordinance or fails to comply with any of the conditions of such licence by any act that is not of itself punishable by any law in force, he shall be liable, on conviction before a magistrate, to imprisonment for a period not exceeding three months, and to have his licence forfeited by the order of the magistrate by whom such person is convicted.

Consequences of forfeiture or revocation of licence to be at large.

46. Where any licence under this Ordinance is forfeited or revoked, the person whose licence is forfeited or revoked shall, after undergoing any other punishment to which such person may be sentenced for the offence in consequence of which his licence is forfeited or revoked, further undergo a term of imprisonment equal to the portion of his term that remained unexpired at the time of his release under such licence.

Loss of licence.

47. If the holder of a licence granted under the provisions of this Ordinance proves to the satisfaction of a magistrate that he has lost his licence through no fault of his own he shall be entitled to a duplicate of such licence.

Procedure when licence is revoked or forfeited by reason of a conviction.

48. (1) Whenever a licence is revoked by the Commissioner, any magistrate shall, on the production to him of a certificate of such revocation, issue a warrant which may be executed in any part of the Colony for the apprehension of the person to whom such licence was granted; and such person being apprehended shall be brought before the magistrate who shall make out his warrant for the recommitment of such person to prison to undergo the residue of his sentence as if no such licence had been granted.

(2) Whenever a licence is forfeited by the order of the magistrate under section 45 of this Ordinance, such magistrate shall make out a warrant for the recommitment of such person to prison to undergo the residue of his sentence as if no such licence had been granted.

MAINTENANCE.

Maintenance of certain prisoners from private sources.

49. (1) A civil prisoner or a criminal prisoner before trial, may be permitted to maintain himself, and to purchase or receive from private sources at proper hours moderate quantities of food, clothing, bedding or other necessaries, but subject to examination and such other conditions as may be prescribed.

(2) No food, clothing, bedding or other necessaries allowed to a civil prisoner or a criminal prisoner before trial under sub-section (1) shall be given, hired or sold to any other prisoner and any prisoner who is guilty of an offence under the provisions of this section shall be liable to lose the privilege of purchasing food, clothing, bedding or other necessaries or receiving them from private sources for such time as the superintendent may decide or to any other punishment provided under section 58 of this Ordinance.

50. If a civil prisoner or a criminal prisoner before trial does not desire to provide himself with clothing and bedding such prisoner shall receive the regular prison clothing and bedding.

Supply of clothing and bedding to civil or unconvicted prisoners.

PROHIBITED ARTICLES.

51. Any prison officer may examine anything carried in or out of the prison, and may stop and search, or cause to be stopped and searched, any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the superintendent or chief officer, if any.

Examination of articles taken in or out of prison.

52. Any person who—

(*a*) save as is provided by section 49, brings, throws, or attempts by any means whatever to introduce into any prison, or to give to any prisoner, any spirituous liquor, tobacco or any intoxicating or poisonous drug or any article whatsoever;

Prohibited articles.

(*b*) contrary to any rule or regulation communicates with any prisoner,

is guilty of an offence and is liable to imprisonment for a period not exceeding six months, or to a fine not exceeding thirty pounds, or to both.

53. Any prison officer may arrest any person who—

Power of arrest to prison officer.

(*a*) commits or attempts to commit in the presence of any prison officer any offence specified in the last preceding section;

(*b*) refuses on demand of such prison officer to give his name and residence; or

(*c*) gives a name or residence which such prison officer knows or has reason to believe to be false,

and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

VISITS AND COMMUNICATIONS.

54. (1) Convicted criminal prisoners may be allowed once a month to receive a visit from friends in the sight and hearing of a prison officer, and to write and receive a letter.

Visits and communication to prisoners.

(2) Should a prisoner be seriously ill and desire to be visited by any near relative or friend, the superintendent, on the recommendation of the medical officer, may give an order in writing for the admission of such relative or friend if he considers it advisable.

(3) All prisoners awaiting trial shall be allowed all reasonable opportunities of communicating with their friends or legal adviser, and, subject to any regulations which may be made under this Ordinance, they may write and receive letters.

(4) Ministers of religion may be admitted at proper and reasonable times to the prison to visit prisoners who may be desirous of their services, and may be permitted to hold religious services at such hours and in such places as the superintendent may sanction.

Visitors may be searched and names and addresses may be demanded.

55. The officer in charge of a prison shall enter the name and address of any visitor to a prisoner in a book provided for the purpose; and, when he has any ground of suspicion, may search or cause to be searched male visitors, and may direct a matron or female warder to search female visitors. Such search shall not be made in the presence of any prisoner or of another visitor. In case of any such visitor refusing to permit himself to be searched, the officer in charge may deny such visitor admission, and the grounds of such denial shall be recorded in the said book.

PRISONERS UNDER SENTENCE OF DEATH.

Supervision of prisoners under sentence of death.

56. (1) Every prisoner sentenced to death shall be confined in some safe place within the prison, and, if possible, apart from all other prisoners and shall be placed under constant observation both by day and by night.

(2) Except on the written authority of the superintendent, no person other than prison officers, the medical officer, a visiting justice or a minister of the religious denomination to which such prisoner belongs shall have access to such prisoner.

(3) All executions shall be attended by the superintendent, the chief officer (if any) and the medical officer, and at the request of the prisoner, may be attended by a minister of the denomination to which he belongs.

DISCIPLINE.

57. The following acts are declared to be prison offences when committed by a prisoner :— **Prison offences.**

(1) quarrelling with any other prisoner;

(2) making groundless complaints;

(3) making false charges against prison officers in reply to any question as to matters concerning the prison or prison discipline, or answering untruthfully any question as to matters contained in section 24 put by a prison officer;

(4) holding any communication, in writing, by word of mouth or otherwise, with an outsider or with a prisoner in disobedience of the regulations of the prison;

(5) doing any act calculated to create any unnecessary alarm in the minds of the prisoners or prison officers;

(6) omitting or refusing to march as ordered when moving about the prison, or proceeding to or returning from work;

(7) refusing to eat the food prescribed by the prison diet scale;

(8) eating or appropriating any food not assigned to him or taking or adding to the portions assigned to other prisoners;

(9) without permission of a prison officer removing food from the cook-house, or from the place where meals are served, or disobeying any order as to the issue and distribution of food and drink;

(10) wilfully destroying food, or throwing it away without orders;

(11) introducing into food or drink anything likely to render it unpalatable or unwholesome;

(12) omitting or refusing to wear the clothing given to him, or exchanging any portion of it for the clothing of other prisoners, or losing, discarding, damaging, or altering any part of it;

(13) removing, defacing, or altering any distinctive number, mark or badge attached to, or worn on the clothing or person;

(14) omitting or refusing to keep the person clean, or disobeying any order regulating the cutting or shaving of hair;

(15) omitting or refusing to keep clothing, blankets, bedding or fetters clean, or disobeying any order as to the arrangement or disposition of such articles;

(16) tampering in any way with prison locks, lamps or lights, or other property with which he has no concern;

(17) stealing the prison clothing or any part of the prison kit of any other prisoner;

(18) committing a nuisance in any part of the prison;

(19) defacing or injuring the walls, furniture or other property of the prison;

(20) spitting on or otherwise soiling any floor, doors, wall or other part of the prison building or any article in the prison;

(21) wilfully befouling the walls, latrines, washing or bathing places;

(22) omitting or refusing to take due care of, or injuring, destroying or misappropriating any tools or any clothing or other articles, the property of the Government;

(23) wilfully causing to himself any illness, injury or disability;

(24) causing or omitting to assist the suppressing of, violence or insubordination of any kind;

(25) taking part in any attack upon any prison officer or upon another prisoner;

(26) omitting or refusing to help any prison officer in case of an attempted escape, or of an attack upon such officer or upon another prisoner;

(27) disobeying any of the regulations or any lawful order of a prison officer, or omitting or refusing to perform duties in the manner pescribed;

(28) treating with disrespect any prison officer or servant of the prison, or any visitor, or any person employed in connection with the prison;

(29) being idle, careless or negligent at work, or refusing to work;

'30) leaving his cell or other appointed location, or his place of work without permission;

(31) having in his possession any article he is not entitled to have;

(32) any assault or use of criminal force;

(33) cursing, swearing or making unnecessary noise;

(34) immoral, or disorderly, or indecent behaviour;

(35) insulting, threatening or indecent language;

(36) malingering;

(37) wilfully bringing a false accusation against any prison officer or prisoner;

(38) escaping, or conspiring to escape or assisting in an escape;

(39) attempting to commit any of the offences aforementioned;

(40) abetting the commission of any prison offence;

(41) any other act, conduct, disorder or neglect to the prejudice of good order or discipline though not specified in the foregoing paragraphs.

Power to try prison offences.

58. The Commissioner, a superintendent or a visiting justice shall have power to hear and decide a charge against any prisoner in respect of any prison offence and the said Commissioner, superintendent or visiting justice may punish any prisoner found guilty by him of any prison offence by ordering the loss of remission of sentence not exceeding seven days, by solitary confinement, with or without penal diet, not exceeding forty-eight hours, by keeping the offender upon reduced diet not exceeding four days, or by any combination of these punishments.

amended by 2.1/1937

In cases of aggravated or repeated prison offences.

59. In any case of aggravated, more serious or repeated offences, any one or more of the following punishments may be imposed by the Commissioner, a superintendent or a visiting justice after due inquiry—

(1) solitary confinement, with or without penal diet, for a period not exceeding fourteen days;

(2) reduced diet for a period not exceeding twenty-eight days;

(3) loss of remission not exceeding twenty-eight days;

(4) corporal punishment:

(5) ...

Provided that—

(*a*) solitary confinement shall not be continuous for more than seven days, and an interval of seven days shall elapse before a further period of such confinement;

new paragraph 2.1/1937

(*b*) if an offender is sentenced to penal diet for a longer period than four days the penal diet shall not be imposed for more than three days continuously with an interval of three days before it is again imposed.

(*c*) if an offender is sentenced to reduced diet for a longer period than seven days the reduced diet shall not be imposed for more than seven days continuously with an interval of three days before it is again imposed.

Prisoner to be allowed to make his defence.

60. No prisoner shall be punished until he has had an opportunity of hearing the charge and evidence against him, and making his defence.

Corporal punishment.

61. (1) Corporal punishment shall not be awarded except for the following offences :—

(*a*) repeated serious offences against prison discipline;

(*b*) personal violence to any person;

(*c*) grossly abusive or offensive language; or

(*d*) any act of grave misconduct or insubordination.

(2) A sentence of corporal punishment shall be to be whipped once only. Such whipping shall be with a rod or cane to be approved by the Governor or with such other instrument as the Governor may approve. The sentence shall specify the number of strokes which shall not exceed twenty-four. A sentence of corporal punishment imposed on a non-native or where the number of strokes exceeds twelve shall be subject to confirmation by the Governor and shall not be carried into effect until such confirmation shall have been received.

(3) No sentence of corporal punishment shall be passed upon any of the following persons :—

(*a*) Females.

(*b*) Males under sentence of death.

(*c*) Males more than forty-five years of age.

(4) A sentence of corporal punishment shall not be carried out except in the presence of a medical officer or, if no such medical officer is available, of a European officer of the Colony, nor before such medical or other officer has after examination certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him.

(5) The medical or other European officer may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out, if in his opinion the prisoner is unable to bear such sentence without risk of grave or permanent injury.

(6) No sentence of corporal punishment shall be carried out by instalments.

Trial before court for prison offence.

62. Any prisoner may be charged before any court of competent jurisdiction with any offence against prison discipline, and such court may sentence the offender to imprisonment for a period not exceeding six months. Such sentence shall run from the expiration of any previous sentence.

Offence by subordinate officers.

63. Any subordinate officer who—

(1) uses traitorous or disloyal words regarding the Sovereign; or

(2) strikes or uses or offers any violence against his superior officer, or uses threatening or insubordinate language to his superior officer; or

(3) wilfully disobeys any lawful command; or

(4) is drunk; or drinks intoxicants while actually on duty; or

(5) absents himself without leave; or

(6) sleeps on his post; or leaves it before being regularly relieved except in fresh pursuit of any offender whom he ought to apprehend; or

(7) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority; or

(8) neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to arrest; or

(9) allows any prisoner to escape who is committed to his charge or whom it is his duty to keep or guard; or

(10) offers unwarrantable personal violence to any person in his custody; or

(11) is guilty of cowardice; or

(12) fires his rifle without just cause or orders; or

(13) without cause fails to appear at any parade appointed by his superior officer; or

(14) pawns, sells, loses by neglect, makes away with or wilfully spoils his arms, accoutrements, clothing, or necessaries or any medal or decoration granted to him for service or good conduct; or

(15) steals any money or goods the property of any prison officer or prisoner, or steals or embezzles any Government money or goods, or receives any such money or goods knowing them to have been stolen or embezzled from any prison officer or prisoner of the Government; or

(16) commits any act of plunder or wanton destruction of property; or

(17) solicits or accepts a gratuity; or

(18) is slovenly, inattentive, uncivil, or quarrelsome; or

(19) does not keep his rifle clean; or

(20) loses without any reasonable cause any ammunition issued to him; or

(21) without due authority discloses or conveys any information concerning any investigation or departmental matter; or

(22) malingers or feigns or produces any disease or infirmity; or

(23) is wilfully guilty of misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders by means of which misconduct or disobedience he produces or aggravates disease or infirmity or delays its cure; or

(24) incurs debt; or

(25) without proper authority exacts from any person, carriage, porterage or provisions; or

(26) resists an escort whose duty it is to apprehend him or to have him in charge; or

(27) breaks out of warders' lines, camp or quarters; or

(28) makes any false statement on becoming a prison officer; or

(29) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send; or

(30) makes a false accusation against any prison officer or prisoner knowing such accusation to be false; or

(31) in making a complaint, where he thinks himself wronged, knowingly makes any false statement affecting the character of any prison officer or knowingly and wilfully suppresses any material facts; or

(32) engages without authority in any employment other than his duty as a prison officer; or

(33) is guilty of any other act, conduct, disorder, or neglect to the prejudice of good order and discipline,

shall be deemed to have committed an offence against discipline :

Provided that nothing in this section shall be construed to exempt any subordinate officer from being proceeded against for any offence by the ordinary course of law.

Punishment for offences by subordinate officers.

64. The Commissioner or a superintendent may inquire into any such offence and thereupon punish the offender by—

(*a*) admonition;

(*b*) reprimand or severe reprimand;

(*c*) confinement to lines and extra duty;

(*d*) fine not exceeding ten shillings;

(*e*) forfeiture of one good conduct badge;

(*f*) stoppage of pay where there has been loss by neglect of or injury to Government property, or absence without leave;

(*g*) reduction in grade;

(*h*) dismissal;

(*i*) any two or more of the above punishments :

Provided that—

(*a*) any sentence of reduction of more than one grade or dismissal shall be subject to confirmation by the Commissioner; and

(*b*) any stoppage of pay exceeding one-half of the offender's monthly pay shall be subject to confirmation by the Commissioner. All stoppages of pay shall be recovered from the offender's pay due or thereafter accruing due and so much only of his pay shall be stopped as shall leave him a residue of at least one-half of his monthly pay.

DISCHARGE.

Superintendent to be responsible for the discharge of prisoners.

65. Every superintendent in charge of a prison shall be responsible for the due discharge of all prisoners in such prison immediately upon their becoming entitled to release.

Release of prisoners.

66. All prisoners shall be discharged by noon on the day on which they are entitled to be released, but should that day fall on a Sunday or any public holdiay, they shall be released by noon on the day next preceding.

Gratuity to prisoners on discharge.

67. When a prisoner is discharged and has no friends or means of subsistence the superintendent may pay him a gratuity of such sum as the Commissioner may prescribe, and may provide him with transport to the district where such prisoner normally resides.

Medical inspection of prisoners before removal or discharge.

68. All prisoners, prior to being removed to another prison or to a mental hospital or discharged, shall be examined by the medical officer, and no prisoner shall be discharged, except at his own request, while labouring under any acute or dangerous illness.

MISCELLANEOUS.

Power to make rules.

69. The Governor in Council may make rules with respect to any of the following matters—

(1) the duties, powers and conduct and conditions of engagement of prison officers and other persons employed in prisons and for the punishment of such officers or other persons;

(2) the establishment of a Rewards and Fines Fund for prison officers and the method of administering such fund;

(3) the grant of gratuities to and purchase of discharge by prison officers;

(4) the duties and powers of visiting justices of prisons;

(5) the medical inspection of prisoners;

(6) the prevention of contagious diseases in prisons;

(7) the construction and description of cells for separate confinement;

(8) the classification of prisons into grades;

(9) the safe custody, the classification, hours of labour, mode of employment, separation, diet, clothing, maintenance, instruction, discipline, discharge, treatment and correction of prisoners;

(10) prescribing what labour or employment shall be deemed hard labour;

(11) the remission of portions of sentences to be earned by good conduct;

(12) any other purpose or object for which by this Ordinance it is provided rules may be made; and

(13) generally all such rules as are necessary for the effective administration of this Ordinance or for the good management and government of such prisons, and the discipline and safe custody of the prisoners therein, and not only therein, but also while employed at labour beyond the limits of the prison.

General penalty for offences.

70. Any person who is guilty of any offence against this Ordinance or against any rule made thereunder for which no penalty is expressly provided shall be liable, on conviction before a magistrate, for every such offence, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding one year, or to both.

Repeal. *Cap.* 37. No. 7 of 1926.

71. The Prisons Ordinance (Chapter 37 of the Revised Edition), as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, is hereby repealed.

SCHEDULE.

(Section 33.)

MEDICAL CERTIFICATE.

I, the undersigned.....hereby certify that I, on the.....day of.....19....., at the Prison at.....in the Colony and Protectorate of Kenya, personally examined..... .....a prisoner in the said prison, and that the said.....

(a) Lunatic or idiot or a person of unsound mind.

is a (*a*)..... and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion on the following facts :—

1. Facts indicating insanity observed by myself

(b) Here state the facts.

(*b*).....

2. Other facts (if any) indicating insanity communicated to me by other

(c) Here state the information and from whom.

(*c*).....

Dated this.....day of.....19.....

.....

Medical Officer.

No. 38 OF 1930.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to Regulate Deeds of Arrangement.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Deeds of Arrangement Ordinance, 1930." Short title.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.

" creditors generally " includes all creditors who may assent to, or take the benefit of, a deed of arrangement;

" prescribed " means prescribed by rules made under this Ordinance;

" property " includes money, goods, things in action, land, and every description of property whether movable or immovable and whether situate in the Colony or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined.

(2) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

PART I.

APPLICATION OF ORDINANCE.

3. (1) A deed of arrangement to which this Ordinance applies shall include any instrument of the classes hereinafter mentioned whether under seal or not— Deeds of arrangement to which Ordinance applies.

(*a*) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;

(*b*) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors,

otherwise than in pursuance of the law for the time being in force relating to bankruptcy.

(2) The classes of instrument hereinbefore referred to are—

(*a*) an assignment of property;

(*b*) a deed of or agreement for a composition,

and in cases where creditors of the debtor obtain any control over his property or business—

(*c*) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(*d*) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and

(*e*) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

PART II.

AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH.

Avoidance of unregistered deeds of arrangement.

4. A deed of arrangement shall be void unless it is registered with the Registrar under this Ordinance within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of the municipality of Nairobi, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in Nairobi, if posted within one week after the execution thereof, and unless it bears such ordinary and *ad valorem* stamp as is provided by this Ordinance.

Avoidance of deeds of arrangement unless assented to by a majority of the creditors.

5. (1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the Supreme Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried

on business at the date of the execution of the deed may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of sub-section (1) of this section shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the Registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twenty-eight days after registration or within such extended time as the Supreme Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding two hundred shillings shall be reckoned in the majority in value, but not in the majority in number.

PART III.

Registration of Deeds of Arrangement.

Registrar for registration.

6. The Registrar General shall be the Registrar for the purposes of this Ordinance.

Mode of registration.

7. (1) The registration of a deed of arrangement under this Ordinance shall be effected in the following manner :—

A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the Registrar within seven clear

days after the execution of the deed (in like manner as a bill of sale given by way of security for the payment of money is required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.

(2) No deed shall be registered under this Ordinance unless the original of the deed, duly stamped with the proper stamp duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every two thousand shillings or fraction of two thousand shillings of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the Registrar at the time of such registration.

Form of register.

8. The Registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Ordinance, containing the following and any other prescribed particulars :—

(*a*) the date of the deed;

(*b*) the name, address and description of the debtor, and the place or places where his business was carried on at the date of the execution of the deed, and the title of the firm or firms under which the debtor carried on business, and the name and address of the trustee (if any) under the deed;

(*c*) a short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder;

(*d*) the date of registration;

(*e*) the amount of property and liabilities included under the deed, as estimated by the debtor.

Rectification of register.

9. The Supreme Court upon being satisfied that the omission to register a deed of arrangement within the time required by this Ordinance or that the omission or misstatement of the name, residence or description of any person was

accidental, or due to inadvertence or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence or description.

Time for registration.

10. Where the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

Inspection of register and registered deeds.

11. Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and, subject to such regulations as may be prescribed, shall be entitled, at all reasonable times, to inspect, examine and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected :

Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

Local registration of copy of deeds.

12. (1) Where the place of business or residence of the debtor who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place within an area in respect of which a district registry of the Supreme Court has been established, the Registrar shall, within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit a copy of the deed to the district registrar of the area in which such place of business or residence is situate.

(2) Every copy so transmitted shall be filed, kept and indexed by the district registrar in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms, as to payment or otherwise, as near as may be, as in the case of deeds registered under this Ordinance.

PART IV.

Provisions as to Trustees.

Security by trustee.

13. (1) The trustee under a deed of arrangement shall, within fourteen days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the judge or registrar of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, in a sum equal to the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration to administer the deed properly and account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security :

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, on the application of any creditor and after hearing such persons as it may think fit, may declare the deed of arrangement to be void, or may make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by the registrar to whom it was given and filed with the Registrar, shall be conclusive evidence of the fact.

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect

of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding two hundred shillings shall be reckoned in the majority in value but not in the majority in number.

Penalty on trustee acting when deed of arrangement void.

14. If a trustee acts under a deed of arrangement—

(*a*) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Ordinance or any enactment repealed by this Ordinance; or

(*b*) after he has failed to give security within the time and in the manner provided for by this Ordinance or any enactment repealed by this Ordinance,

he shall be liable on conviction to a fine not exceeding one hundred shillings for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Transmission of accounts to Official Receiver.

15. (1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Official Receiver in Bankruptcy for the Colony, or as he directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(2) If any trustee fails to transmit such account, he shall be liable on conviction by a magistrate of the first class to a fine not exceeding one hundred shillings for each day during which the default continues, and the Supreme Court, for the purpose of enforcing the provisions of the last preceding sub-section, shall exercise, on the application of the Official Receiver, all the powers conferred on the court by sub-section (2) of section 97 of the Bankruptcy Ordinance, 1930, in cases of bankruptcy. No. 32 of 1930.

(3) The accounts transmitted to the Official Receiver in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the

accounts shall, on payment of the prescribed fee, be furnished to the debtor, the creditors or any other persons interested.

(4) In this section the expression " trustee " shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression " prescribed " means prescribed by rules under the Bankruptcy Ordinance, 1930.

No. 32 of 1930.

Transmission of accounts to creditors.

16. Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, in his affidavit verifying his accounts transmitted to the Official Receiver, state whether or not he has duly sent such statements, and the dates on which the statements were sent; and, if a trustee fails to comply with any of the provisions of this section, the Supreme Court may, for the purpose of enforcing those provisions, exercise, on the application of the Official Receiver, all the powers conferred on the court by sub-section (2) of section 97 of the Bankruptcy Ordinance, 1930, in cases of bankruptcy.

No. 32 of 1930

Audit of accounts.

17. (1) Where, in the course of administration of the estate of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the Official Receiver, an application in writing is made to the Official Receiver by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the Official Receiver may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Ordinance, 1930, relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications, apply to the audit of the trustee's accounts, and the Official Receiver shall have power on the audit to require production of a certificate for the taxed costs of any advocate whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced.

No. 32 of 1930.

(2) The Official Receiver may determine how and by what parties the costs, charges and expenses of and incidental to the audit (including any prescribed fees chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an application for an audit require the applicants to give security for the costs of the audit.

Payment of undistributed moneys into court.

18. At any time after the expiration of two years from the date of the registration of a deed of arrangement, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be paid into court or to the Official Receiver for the credit of the Bankruptcy Estates account, as the court shall deem fit.

Preferential payment to creditor an offence.

19. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of a misdemeanour.

Power to Supreme Court to appoint new trustee.

20. (1) The Supreme Court may, whenever it is expedient to appoint a new trustee under a deed of arrangement and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of such new trustee. In particular and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony or is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former trustee than an appointment of a new trustee under any power for that purpose contained in any deed of arrangement would have operated.

Provisions for the protection of trustees under void deeds.

21. (1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the benefit of three or more creditors, by reason that the debtor was insolvent at the

time of the execution of the deed and that the deed was not registered as required by this Ordinance, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after the lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

(2) Where a receiving order is made against a debtor under section 99 of the Bankruptcy Ordinance, 1930, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

No. 32 of 1930.

Notice to creditors of avoidance of deed.

22. When a deed of arrangement is void by virtue of this Ordinance for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by this Ordinance, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar, and, if he fails so to do, he shall be liable on conviction by a magistrate of the first class to a fine not exceeding four hundred shillings.

Payment of expenses incurred by trustees.

23. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Ordinance shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

Application of Part IV.

24. The provisions of this part of this Ordinance, except such of those provisions—

(*a*) as relate to the transmission of accounts to the Official Receiver of debtor's estate for the Colony;

(*b*) as provide for the protection of trustee under void deeds;

(*c*) as require a notice to be given to creditors of avoidance of deeds;

(*d*) as provide for the payment of expenses incurred by trustees;

shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

PART V.

GENERAL.

Courts in which applications for enforcement of trusts to be made.

25. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the Supreme Court.

Relation to bankruptcy law.

26. (1) If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditors' assents with an intimation that the creditor will not after the expiration of two months from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by him as an act of bankruptcy.

(2) Where such a deed of arrangement as aforesaid has become void by virtue of this Ordinance or any enactment repealed by this Ordinance, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

(3) Save as otherwise expressly provided by this Ordinance, nothing in this Ordinance shall be construed as repealing or shall affect any provision of the law for the time being in

force in relation to bankruptcy or shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable.

Office copies.

27. Subject to the provisions of this Ordinance, and to any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Ordinance upon paying the prescribed fees, and any such copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

Fees.

28. There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any copies or extracts, or official searches made by the Registrar, such fees as may be from time to time prescribed; and nothing in this Ordinance contained shall make it obligatory on the Registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.

Rules.

29. The Chief Justice, with the concurrence of the Governor, may make general rules for carrying into effect the objects of this Ordinance.

Deeds of Arrangement Rules applied.

30. Unless and until the Chief Justice shall make general rules under the powers conferred by section 29 of this Ordinance, the Deeds of Arrangement Rules, 1915, made under section 28 of the Deeds of Arrangement Act (Imperial), 1914, are declared to be in force in the Colony, and shall be read and considered as part of this Ordinance, and it shall be lawful for the court to construe the said Rules with such verbal alterations not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court; provided always that any such construction or alteration shall not be inconsistent with the provisions of this Ordinance.

No. 39 OF 1930.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to make Further Provisions for the Administration of Justice and to Constitute Native Tribunals in the Colony.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Native Tribunals Ordinance, 1930." Short title.

2. In this Ordinance— Interpretation.

" native " means a native of Africa, not of European or Asiatic descent, and includes a Swahili;

" native tribunal " means a tribunal established under this Ordinance;

" headman " means a headman appointed under the provisions of the Native Authority Ordinance. *Cap.* 129.

3. (1) By warrant under his hand, and subject to the approval of the Governor, a provincial commissioner may establish within his province such native tribunals as he shall think fit which shall exercise over natives such jurisdiction and within such limits as may be defined by such warrant. Establishment of native tribunals.

(2) With the approval of the Governor a provincial commissioner may at any time suspend, cancel or vary any warrant establishing a native tribunal or defining the jurisdiction of any such tribunal or the limits within which such jurisdiction may be exercised.

4. A native tribunal shall be constituted in accordance with the native law or custom of the area in which the tribunal is to have jurisdiction and a native tribunal purporting to be so constituted shall be deemed to be lawfully constituted in accordance with this Ordinance unless the contrary be shown : Constitution of tribunals.

Provided that, if he shall think fit, the provincial commissioner may, with the approval of the Governor, prescribe the constitution of any native tribunal, or the order of precedence among the members thereof, or the powers and duties of any persons acting as assessors to any such tribunal.

Suspension and dismissal of members.

5. A provincial commissioner may suspend for a period not exceeding three months, or, with the approval of the Governor, may dismiss or may suspend for a period exceeding three months, any member of a native tribunal who shall appear to have abused his power, or to be unworthy or to be incapable of exercising the same justly, or for other sufficient reason. On such dismissal or for the period of his suspension the member shall be disqualified from exercising any powers or jurisdiction as a member of the tribunal unless and until he is expressly reinstated by the provincial commissioner.

Operation of warrants, etc., issued by a provincial commissioner subject to approval of Governor.

6. All warrants, appointments and orders issued or made by a provincial commissioner under this Ordinance which are subject to the approval of the Governor shall be operative and of effect from the date thereof unless and until disallowed by the Governor.

Sessions.

7. A native tribunal shall hold sessions at such times and places as may be necessary for the convenient and speedy despatch of the business of the tribunal:

Provided that the Provincial Commissioner may direct sessions to be held at such times and places as he shall think fit.

Jurisdiction of native tribunals.

8. Every native tribunal shall have full jurisdiction, to the extent set forth in its warrant and subject to the provisions of this Ordinance, over causes and matters in which all the parties are natives resident or being within the area of the jurisdiction of the tribunal:

Provided that in civil cases in which one or more of the parties is an Arab or in criminal cases in which the accused person is an Arab a native tribunal shall have jurisdiction only with the consent of such party or parties.

Provided further that in any area the Governor may prescribe that any tribunal shall be constituted in whole or in part of Somalis, and may further prescribe that any tribunal so constituted shall have jurisdiction over Somalis as well as over natives.

Governor may exclude persons from jurisdiction of native tribunals.

9. The Governor may direct that any native or class of natives shall not be subject to the jurisdiction of native tribunals except with their consent or the consent of the provincial commissioner.

Criminal jurisdiction.

10. The criminal jurisdiction of a native tribunal shall extend, subject to the provisions of this Ordinance, to the hearing, trial and determination of all criminal charges and matters in which any native is accused of having wholly or in part within the jurisdiction of the tribunal, committed or been accessory to the committing of an offence.

Civil jurisdiction.

11. The civil jurisdiction of a native tribunal shall extend, subject to the provisions of this Ordinance, to the hearing, trial and determination of all civil suits and matters in which the defendant is ordinarily resident within the area of the jurisdiction of the tribunal or in which the cause of action shall have arisen within the said area :

Provided that civil proceedings relating to immovable property shall be taken in the native tribunal within the area of whose jurisdiction the property is situated.

Cases excluded from the ordinary jurisdiction of a tribunal.

12. Subject to the express provision conferring jurisdiction, no native tribunal shall have jurisdiction to try—

(*a*) cases in which a person is charged with an offence in consequence of which death is alleged to have occurred or which is punishable under any law with death or imprisonment for life;

(*b*) cases in connexion with marriage other than a marriage contracted under or in accordance with native law or custom, except where the claim is one for bride price only;

(*c*) cognizable offences committed in any place which, under any law in force in the Colony, is declared to be a municipality or a township.

Law to be administered.

13. Subject to the provisions of this Ordinance, a native tribunal shall administer—

(*a*) the native law and custom prevailing in the area of the jurisdiction of the tribunal, so far as it is not repugnant to justice or morality or inconsistent with the provisions of any order of the King in Council or with any other law in force in the Colony;

(*b*) the provisions of all rules or orders made by a a provincial commissioner, district officer, or native authority under the Native Authority Ordinance and in force in the area of the jurisdiction of the tribunal;

Cap. 129.

(*c*) the provisions of any Ordinance which the tribunal is by or under such Ordinance authorized to administer; and

(*d*) the provisions of any law which the tribunal may be authorized to administer by an order of the Governor made under section 14.

Governor may empower native tribunal to enforce specified laws.

14. The Governor may by order confer upon all or any native tribunals jurisdiction to enforce all or any of the provisions of any law specified in such order subject to such restrictions and limitations, if any, as the Governor may specify.

Punishments.

15. For offences against native law or custom a native tribunal may, subject to the provisions of this Ordinance, impose a fine or may order imprisonment with or without hard labour, or both a fine and imprisonment, or may inflict any punishment authorized by native law or custom:

Provided that such punishment shall not be repugnant to natural justice and humanity, and the fine or other punishment shall in no case be excessive but shall always be proportioned to the nature and circumstances of the offence:

Provided further that no native tribunal shall pass a sentence of corporal punishment.

Places of imprisonment.

16. Every person sentenced by a native tribunal to imprisonment or taken in execution of the process of such court shall be detained in a place authorized by a provincial commissioner as a native prison:

Provided that where there is no such authorized native prison in which such person can be detained he may be detained in a prison established under any law of the Colony.

Recovery of fines.

17. A native tribunal may order that any fine which it shall impose shall be paid at such time or times and by such instalments and in kind or otherwise as it shall think just, and in default of the payment of any fine or of any instalment of the same when due, the tribunal may order that the amount

of the fine or of the instalment, as the case may be, shall be levied by the sale of any property belonging to the offender or that the offender undergo imprisonment in default of payment of such fine or such instalment.

Compensation to aggrieved persons.

18. A native tribunal may direct that any fine, or such part thereof as it shall deem fit, be paid to the person injured or aggrieved by the act or omission in respect of which such fine has been imposed, on condition that such person, if he shall accept the same, shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of such act or omission.

Contempt of court.

19. Any person subject to the jurisdiction of a native tribunal who shall omit to produce or deliver up a document on the lawful order of such tribunal or who shall contumaciously refuse or neglect to comply with any lawful order of such tribunal, or who shall refuse to answer any question lawfully asked by the tribunal, or to sign any statement lawfully required by the tribunal, or who intentionally insults the tribunal or any member thereof, or who intentionally interrupts the proceedings thereof at any stage, shall be guilty of a contempt of court and shall be liable to a fine not exceeding one hundred shillings, and in default of payment to imprisonment with or without hard labour not exceeding one month.

Power to summon witnesses.

20. (1) Every native tribunal shall have power to summon before the tribunal any native or any other person subject to its jurisdiction for the purpose of giving evidence.

(2) Any such person who without reasonable excuse shall fail to obey any summons lawfully issued under this section may be arrested and brought before the tribunal and shall be liable to a fine not exceeding one hundred shillings or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Service outside the jurisdiction of a native tribunal.

21. (1) Any writ, warrant, order or other process issuing out of a native tribunal, and endorsed by the district commissioner with a request for the service or execution thereof within the jurisdiction of another native tribunal may, upon payment of the prescribed fees for service or execution be served or executed within the jurisdiction of such other tribunal.

Proof of service or execution.

(2) An affidavit that process has been served or executed under this section, or an endorsement that it cannot be so served or executed shall be made by the officer by whom such service or execution was effected or was attempted to be effected.

Witness expenses in civil cases to be paid.

(3) The tribunal within whose jurisdiction any summons for a witness in a civil case is to be served may order that such summons be not served unless there shall have been paid such sum as the tribunal may consider reasonable to cover the expenses of such witness in attending the trial.

Practice and procedure.

22. Subject to such rules as may be made under section 43, the practice and procedure of native tribunals shall be regulated in accordance with native law and custom.

Reports of cases to be submitted to the district commissioner.

23. At such times and in such form as may be prescribed every native tribunal shall submit to the district commissioner in writing, or, if so directed, orally, a report of all cases tried in such tribunal.

If such report is made orally a record of all cases so reported shall be made by the officer to whom the report is made.

Parties to appear in person.

24. No advocate or legal practitioner may appear or act for any party before a native tribunal, or on any appeal from a judgment or order of a native tribunal to a native court of appeal or to a district commissioner or a provincial commissioner, but a native tribunal may permit the husband or wife, or guardian, or any servant, or the master, if a native, or any inmate of the household of any plaintiff or defendant, who shall give satisfactory proof that he or she has authority in that behalf, to appear and to act for such plaintiff or defendant.

Provincial commissioner and district officer may sit as advisers.

25. A provincial commissioner may sit as adviser in any native tribunal in his province, and subject to the directions of the provincial commissioner a district officer shall have the like authority in respect of any native tribunal in his district.

Adjudication without authority.

26. Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted native tribunal, except in accordance with the provisions of any order of His Majesty in Council or of any Ordinance, or who shall sit as a member of such tribunal without due authority, shall be liable, on conviction before a subordinate court of the first or second class, to imprison-

ment with or without hard labour for a period not exceeding twelve months or to a fine not exceeding fifty pounds, or to both such fine and imprisonment.

Members of native tribunals taking rewards.

27. Whoever, being or expecting to be a member of a native tribunal, accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any act as a member of such tribunal, or for showing or forbearing to show, as a member of such tribunal, favour or disfavour to any person shall be liable on conviction before a magistrate of the first or second class to imprisonment with or without hard labour for a period not exceeding two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

Taking reward for influencing native tribunals.

28. Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person for himself or for any other person, any gratification or reward whatever, whether in money or otherwise, for inducing or attempting to induce by corrupt or illegal means, or by personal influence any native tribunal, or any member thereof, to do or forbear to do any act which such tribunal or member is authorized to do in the exercise of lawful jurisdiction or to show favour or disfavour to any person, shall be liable on conviction before a magistrate of the first or second class to imprisonment with or without hard labour for a period not exceeding one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

Penalty for false evidence.

29. Whoever in any proceeding before a native tribunal gives evidence, whether upon oath or otherwise, which he knows to be false, or believes to be false or does not believe to be true, shall be guilty of an offence and shall be liable on conviction before a magistrate of the first or second class to imprisonment with or without hard labour for a period not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

Revisionary powers of provincial commissioners and district officers.

30. Every provincial commissioner and district officer shall at all times have access to any native tribunal in his province or district and to the records of such tribunals, and on the application of any person concerned or of his own motion, may—

(*a*) revise any of the proceedings of a native tribunal, whether civil or criminal, and may make such order

or pass such sentence therein as the native tribunal could itself have made or passed, provided that no sentence of fine or imprisonment or other sentence in any criminal proceeding shall be increased without first giving the accused an opportunity to be heard and provided further that if any such sentence shall be increased upon revision by a district officer, there shall be an appeal from the order of the district officer to the provincial commissioner;

(*b*) order any case to be re-tried either before the same native tribunal or before any other native tribunal of competent jurisdiction;

(*c*) transfer any cause or matter either before trial or at any stage of the proceedings, whether before or after sentence passed or judgment given to any subordinate court of the first or second class.

Removal on motion of defendant.

31. The defendant in any case, civil or criminal, commenced or brought before any native tribunal may apply to the district commissioner or to the provincial commissioner for the removal of the proceedings, and the district commissioner or the provincial commissioner may, for reasons which he shall record in writing, stop the hearing or further hearing of the case before such native tribunal on such terms as he may consider just, and may direct that the case be tried by any subordinate court of competent jurisdiction.

Proceedings on transfer from native tribunal to subordinate court.

32. When a case is transferred from a native tribunal to a subordinate court, whether for trial or re-trial, by an order under section 30 (*c*) or section 31 or section 37 (*b*) or section 40, the native tribunal shall report the proceedings to the subordinate court and thereupon the subordinate court shall proceed to the trial or re-trial of the case as though, in a criminal proceeding, a complaint of facts constituting the offence had been made to the court and, in a civil proceeding, as though a plaint therein had been filed in the court.

Appointment of courts of appeal.

33. (1) A provincial commissioner may, with the approval of the Governor, by order under his hand, appoint the native tribunal presided over by a headman or senior elder or a tribunal composed of not fewer than three selected elders in a province or district, to be a court of appeal from all or any of the native tribunals in the province or district in respect of all or any of the cases arising therein.

(2) If there be no native tribunal competent to hear an appeal under the preceding sub-section, or if in any particular case, or class of cases, the provincial commissioner shall so direct, an appeal shall lie from the native tribunal of first instance to the district commissioner.

Appeals.

34. (1) Any person aggrieved by any order or decision of a native tribunal of first instance may within thirty days from the date of such order or decision, appeal therefrom to the native court of appeal or, if there be no such native court of appeal, or if the provincial commissioner shall so direct under sub-section (2) of section 33, to the district commissioner.

(2) Any person aggrieved by any order or decision of a native court of appeal may within thirty days from the date of such order or decision appeal therefrom to the district commissioner.

(3) Any person aggrieved by any order or decision of a district commissioner, whether made or given upon appeal from a native tribunal of first instance or upon appeal from a native court of appeal, may within thirty days from the date of such order or decision appeal therefrom to the provincial commissioner.

(4) Any person aggrieved by any order or decision of the provincial commissioner made or given upon appeal from a district commissioner, whereby such person is sentenced to a term of imprisonment of four months or more, or to pay a fine exceeding £15, or, in civil proceedings other than cases in connexion with marriage or inheritance or relating to immovable property, is ordered to pay a sum of more than £50, excluding costs may within thirty days from the date of such order apply to the provincial commissioner to state a case for the consideration of the Supreme Court, and the provincial commissioner shall thereupon state and sign such case and transmit it to the Registrar of the Supreme Court.

Appeals out of time.

35. Leave to appeal out of time to any court or authority prescribed by the preceding section may be given by such court or authority upon such terms as to such court or authority shall seem just.

Appeals in frivolous or trivial cases.

36. In order to prevent appeals in frivolous or trivial cases the Governor in Council may by rule prescribe that an appeal shall not lie in any specified class of case, whether civil or criminal, either at all or beyond any specified authority.

Power on appeal.

37. A native court of appeal, a district commissioner, a provincial commissioner or the Supreme Court, in the exercise of appellate jurisdiction in any cause or matter under this Ordinance, may require the aid of such persons as assessors as the court or other authority shall think fit and may—

(*a*) confirm vary or set aside the order of the tribunal of first instance or make any such order or pass any such sentence as the tribunal of first instance could have made or passed in such cause or matter;

(*b*) order any such cause or matter to be reheard before the tribunal of first instance, or before any other native tribunal, or before any subordinate court of competent jurisdiction.

Execution of orders of Supreme Court, subordinate courts or other native tribunals.

38. (1) A native tribunal shall carry into execution any decrees or orders of the Supreme Court or of any subordinate court or of any other native tribunal directed to the tribunal, and shall execute all warrants and serve all process issued by any such court as aforesaid and directed to the tribunal for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required.

Enforcement of orders of native tribunal.

(2) A subordinate court may take such steps as it may think fit to enforce the orders of any native tribunal provided that such orders are endorsed by the district commissioner within whose district such native tribunal has jurisdiction with a request that such orders be enforced.

Monthly lists to be sent to Attorney General.

39. At the end of every month the district commissioner shall forward to the Attorney General, on such form as the Governor may prescribe, a complete list of all criminal proceedings decided by or brought before a native tribunal in his district during the month setting out the name of the defendant, the offence with which he was charged, and, if convicted, the date of conviction, and the sentence or order in full.

Lists to operate as appeal.

40. Every list of criminal cases so transmitted shall operate as an appeal on behalf of every convicted person whose name is included therein, and the Attorney General may without hearing argument, exercise in respect of any case included in such list any of the powers conferred on an appellate authority by section 37 of this Ordinance.

Indemnity of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

41. No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Ordinance, whether or not within the limits of his jurisdiction:

Provided that at the time of such act or order he believed in good faith that he had jurisdiction to do such act or to make such order; and no officer of any native tribunal or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Ordinance shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

Existing native tribunals. *Cap.* 5.

42. (1) The Governor may declare that all or any native tribunals established under the Courts Ordinance in any specified district or area shall be deemed to be native tribunals established under this Ordinance and thereupon the jurisdiction conferred upon such tribunals under the Courts Ordinance shall be deemed to have been conferred upon such tribunals under this Ordinance and shall be exercised in all respects and may be determined or varied in accordance with this Ordinance and nothing in the Courts Ordinance shall apply to any such tribunals.

Cap. 5.

Cap. 5.

(2) Save as provided by this section nothing in this Ordinance shall apply to any court established under the Courts Ordinance.

Cap. 5.

Power to make provision for certain matters by rule.

43. The Governor in Council may by rule make provisions for the folowing matters—

(1) the fees to be charged in any native tribunal and on appeals from a native tribunal;

(2) the disposal and application of fines and fees received by native tribunals;

(3 the practice and procedure of native tribunals;

(4) the practice and procedure on appeal from a native tribunal;

(5) the establishment and government of native prisons; and

(6) generally for the carrying into effect the provisions of this Ordinance.

44. This Ordinance shall continue in force until the 31st day of December, 1933, and shall then expire :

Provided that the Governor may by proclamation with the approval of the Legislative Council and of the Secretary of State declare that this Ordinance shall remain in force until a date to be fixed in such proclamation or until repealed.

NO. 40 OF 1930.

[3RD SEPTEMBER, 1930.] Date of assent.

An Ordinance to Amend the Shop Hours Ordinance, 1925.

3rd September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Shop Hours (Amendment) Ordinance, 1930," and shall be read as one with the Shop Hours Ordinance, 1925, hereinafter referred to as " the Principal Ordinance." Short title. No. 24 of 192.

2. The Principal Ordinance is hereby amended by the addition thereto of the following section :— Exclusion of certain trades and businesses from operation of Principal Ordinance.

" 19. Nothing in this Ordinance shall apply to the trade or business of a motor fuel seller, or a motor oil seller, nor to the trade or business of a seller of motor, cycle, or aircraft supplies and accessories."

3. The third item in the Second Schedule to the Principal Ordinance is hereby deleted. Amendment of Second Schedule to the Ordinance.

4. Section 9 of the Principal Ordinance is hereby amended by the addition thereto of the following sub-section :— Addition to section 9 of the Principal Ordinance.

" 7. Notwithstanding anything contained in this section any shop situated in any area which is now or may hereafter be set aside as a native location may remain open until 7 o'clock in the afternoon on every day in each week other than Sunday."

No. 41 OF 1930.

Date of assent. [12TH SEPTEMBER, 1930.]

An Ordinance to Amend the Chattels Transfer Ordinance, 1930.

Date of commencement. *13th June, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Chattels Transfer (Amendment) Ordinance, 1930," and shall be read as one with the Chattels Transfer Ordinance, 1930, hereinafter referred to as " the Principal Ordinance."

No. 24 of 1930.

Stamp duty payable. **2.** The stamp duty payable on an instrument under the Principal Ordinance, other than a receipt for the purchase money of chattels, shall be one shilling, which shall be denoted by means of an adhesive stamp duly cancelled by the person executing the instrument.

Date of operation. **3.** This Ordinance shall be deemed to have come into force on the thirteenth day of June, 1930.

No. 42 OF 1930.

[12TH SEPTEMBER, 1930.] Date of assent.

An Ordinance to Regulate the Sale and Distribution of Wheat Grown in the Colony.

12th September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Sale of Wheat Ordinance, 1930." Short title.

2. In this Ordinance— Interpretation.

" agency " means the person or body of persons from time to time appointed by the Governor in Council to be an agency for the purposes of this Ordinance;

" miller " means a person who by a process of milling converts wheat into any form of wheat flour for purposes of sale;

" registered miller " means a miller registered in accordance with the provisions of section 4 of this Ordinance;

" purchase " includes agree or contract to purchase, and connotes taking delivery of the article purchased and making payment therefor within a reasonable time;

" sell " includes agree or contract to sell;

" wheat grower " means any person who grows wheat for sale.

3. The Governor in Council may by proclamation appoint any person or body of persons to be an agency for the purposes of this Ordinance, and may in like manner revoke or vary such appointment. If two or more persons or bodies of persons are so appointed to be agencies, the Governor in Council may in like manner prescribe the area of the Colony in respect of which each of such persons or bodies of persons is appointed to be an agency, or may in like manner from time to time vary such area. As and from the date of any such appointment and so long as there is an agency so appointed the provisions of sections 4 to 14 inclusive shall apply. Governor in Council may appoint agency.

Registration of millers.

4. (1) Every person carrying on the business of a miller shall within one month of the commencement of this Ordinance, or within one month of his beginning to carry on the said business, register himself as a miller at the office of the district commissioner of the district or one of the districts in which he carries on business.

(2) A fee of five shillings shall be payable for such registration.

Wheat to be sold to agency.

5. No wheat grower shall sell any wheat to any person other than an agency.

Agency only to purchase wheat.

6. No person other than an agency shall purchase any wheat from any wheat grower.

Agency to purchase all wheat offered.

7. An agency shall purchase all wheat offered to it which is suitable for conversion into flour for human consumption.

Agency to sell wheat to registered millers only.

8. An agency shall not sell or supply wheat to any miller other than a registered miller: Provided that in the event of one or more agencies being appointed under this Ordinance before the expiration of one month after the commencement of this Ordinance an agency may during such period of one month sell or supply wheat to any miller.

Millers to obtain wheat only from agency.

9. No miller shall purchase wheat or receive into his mill any wheat for conversion into flour unless such wheat is supplied to him by an agency and every miller shall, if required by an agency, be responsible for the proper grading of wheat delivered to his mill in accordance with the classification of grades of wheat laid down by such agency.

Penalty for offences.

10. Any person who is guilty of a breach of the provisions of any of the foregoing sections shall on conviction before a magistrate of the first or second class be liable for a first offence to a fine not exceeding one hundred pounds, or to imprisonment for six months or to both such fine and such imprisonment, and for a second or subsequent offence to a fine not exceeding five hundred pounds or to imprisonment for twelve months or to both such fine and such imprisonment. Any court which passes sentence on a registered miller for a second or subsequent offence against the provisions of this Ordinance shall forthwith report such conviction and

sentence to the Governor in Council and the Governor in Council after considering all the circumstances of the case may cancel the registration of such miller, and such miller shall not be entitled thereafter to register as a miller without the consent of the Governor in Council.

Agency to supply at African demands.

11. An agency may sell wheat in any market, whether within or without the Colony, but it shall be the first duty of an agency to supply the demands of the Colony and of other East African territories to the satisfaction of the Governor.

Agency to give equal treatment to registered millers.

12. An agency shall be responsible to the Governor for satisfying the requirements of all registered millers within the Colony at the same price for wheat of the same quality.

Agencies to agree as to price of wheat.

13. If more than one agency is appointed, each such agency shall enter into an agreement with each other agency, in a form to be approved by the Governor, whereby each such agency agrees to pay to the wheat grower the same price for wheat of the same quality, and to bear, to an extent proportionate to the amount of wheat handled by such agency, the difference (if any) between the export value of wheat and its selling price in the Colony, regard being had to the ratio between the amount of wheat exported from the Colony by all agencies and the amount sold for consumption within the Colony or any other East African territory.

Appeal from agency to Governor.

14. Any person aggrieved by any decision of an agency, either as to the price to be paid for wheat by such agency or as to the price to be charged for that wheat by such agency or as to the failure or refusal of an agency to purchase wheat from or to supply the legitimate demands of such person for wheat may appeal to the Governor, whose decision shall be final, but nothing in this section contained shall be deemed to deprive any person of any right of action which he may have in any competent court in the Colony.

Reservations.

15. Nothing in this Ordinance contained shall be deemed to prohibit—

(*a*) the sale of wheat for export from the Colony;

(*b*) the sale of wheat for any purpose in accordance with the terms of a contract in writing duly made before the appointment of an agency;

(*c*) the sale of wheat for consumption by animals;

(*d*) the sale, purchase or milling of wheat grown elsewhere than in the Colony;

(*e*) the sale of wheat to be used for seed purposes;

(*f*) the milling of wheat grown by the miller:

Provided that the burden of proving any such matter of exception as is in this section contained shall rest on the person alleging such matter of exception.

Wheat grown by natives.

16. The Governor may by proclamation exempt from the provisions of this Ordinance the sale or purchase of wheat grown by natives in any native reserve or in any part thereof.

Power to make Rules.

17. The Governor in Council may make Rules—

(*a*) prescribing the conditions on which an agency may be appointed;

(*b*) prescribing the duties and functions of an agency;

(*c*) generally for the better carrying out of the provisions of this Ordinance.

No. 43 OF 1930.

[28TH NOVEMBER, 1930.] Date of assent.

An Ordinance to Make Provision for Raising of a Loan of Three Million Three Hundred and Sixty-four Thousand Eight Hundred and Fifty-two Pounds Sterling for the Construction of certain Public Works and Other Purposes.

28th November, 1930.

Date of commencement.

WHEREAS it is expedient to raise a loan of Three Million Three Hundred and Sixty-four Thousand Eight Hundred and Fifty-two Pounds Sterling for the purposes specified in the Schedule hereto :

BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Specific Loan Ordinance, 1930."

Short title.

2. The Governor is hereby authorised to issue debentures or stock or both under the provisions of the General Loan and Inscribed Stock Ordinance to an amount sufficient to produce as nearly as may be the sum of three million three hundred and sixty-four thousand eight hundred and fifty-two pounds sterling, and such further sum as may be necessary to defray the expenses of issue.

Authority to Governor to borrow by sale of debentures or inscribed stock. *Cap.* 46.

3. The money to be borrowed under the authority of this Ordinance shall be appropriated and applied to the purposes specified in the Schedule hereto :

Application of loan.

Provided that it shall be lawful for the Governor, with the sanction of the Secretary of State, to utilise any money not spent upon any item in the said Schedule to cover any excess of expenditure in respect of any other item.

4. Contribution to Sinking Fund as contemplated by sections 14 and 28 of the General Loan and Inscribed Stock Ordinance shall commence in respect of any stock or debentures issued under this Ordinance not later than three years after the date from which the interest on such stock or debentures shall commence to run.

Commencement of contribution to Sinking Fund. *Cap.* 46.

Power to issue Treasury Bills. *Cap.* 49.

5. Pending the issue of the whole or any portion of the loan hereby authorised, the Governor may, if necessary, raise instalments of the money as required by the issue of Treasury Bills under the Colonial Treasury Bills Ordinance.

Unused borrowing power under Ord. 22 of 1927 not to be exercised.

6. The unused borrowing power conferred by the Specific Loan Ordinance, 1927, and amounting to the sum of two hundred and seventy-five thousand nine hundred and ninety-five pounds shall not be exercised.

SCHEDULE.

	£	£
I—Colonial Development.		
(*a*) Public Buildings	1,275,318	
(*b*) Water Supplies	225,800	
(*c*) Loans to Local Authorities	250,578	
(*d*) Communications	240,275	
(*e*) Land and Agricultural Bank	240,000	
		2,231,971
II—Kenya and Uganda Railways and and Harbours.		
(*a*) Railway Development—		
(1) Branch Lines... ...	313,000	
(2) Rolling Stock	25,000	
(*b*) Harbour Development—		
(1) Construction of Quays and Oil Jetty ...	695,339	
(2) Port Improvements ...	99,542	
		1,132,881
Total ...		£3,364,852

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44 OF 1930.

[15TH DECEMBER, 1930.] Date of assent.

An Ordinance to Amend the Immigration Restriction Ordinance.

15th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Immigration Restriction (Amendment) (No. 2) Ordinance, 1930," and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title. *Cap.* 62.

2. Section 6 of the Principal Ordinance is hereby amended by the insertion of the word " nearest " before the words " immigration officer " in the second and third lines thereof, and by the substitution of the word " such " for the word " the " in the seventh line thereof. Amendment of section 6 of the Principal Ordinance.

3. Section 16 of the Principal Ordinance is hereby amended by substituting the word " is " for the word " it " in the fifth line of the section. Amendment of section 16 of the Principal Ordinance.

Date of assent. [15TH DECEMBER, 1930.]

An Ordinance to Amend the Penal Code.

Date of commencement. *15th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Penal Code (Amendment) Ordinance, 1930," and shall be read as one with No. 1[illegible] of 1930. the Penal Code, hereinafter referred to as " the Principal Ordinance."

2. The following section is hereby inserted in the Principal Ordinance as section 115A :—

False information to public servant. " 115A. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known to him ; or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be guilty of a misdemeanour and shall be liable to imprisonment for six months or to a fine of fifty pounds or to both such fine and such imprisonment "

Amendment of section 123 of the Principal Ordinance. **3.** Section 123 of the Principal Ordinance is hereby amended by deleting the words " or for any term not less than three years."

4. The following sections are hereby inserted in the Principal Ordinance as sections 146A and 146B :—

Indecent assault of boys under fourteen. " 146A. Any person who unlawfully and indecently assaults a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years with or without corporal punishment.

Indecent practices between males.

146B. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years with or without corporal punishment."

5. The following section is hereby inserted in the Principal Ordinance as section 208A :—

Killing unborn child.

" 208A. Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life."

6. The following section is hereby inserted in the Principal Ordinance as section 267A :—

Fraudulent disposition of mortgaged goods.

" 267A. (1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour.

(2) In this section the term " mortgaged goods " includes any goods and chattels of any kind, and any animals, and any progeny of any animals, and any crops or produce of the soil, whether growing or severed, which are subject for the time being, by virtue of the provisions of any Ordinance or of any written instrument, to a valid charge or lien by way of security for any debt or obligation."

7. The following section is hereby inserted in the Principal Ordinance as section 294A :—

False declaration for passport.

" 294A. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or for any other person, is guilty of a misdemeanour."

46 OF 1930.

Date of assent. [15TH DECEMBER, 1930.]

An Ordinance to Amend the Criminal Procedure Code.

Date of commencement. *15th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. No. 11 of 1930.

1. This Ordinance may be cited as " the Criminal Procedure Code (Amendment) Ordinance, 1930," and shall be read as one with the Criminal Procedure Code, hereinafter referred to as " the Principal Ordinance."

Repeal and replacement of sub-sections (1) and (2) of section 118 of the Principal Ordinance.

2. Sub-sections (1) and (2) of section 118 of the Principal Ordinance are hereby repealed and the following substituted therefor :—

Persons in charge of closed place to allow ingress thereto and egress therefrom.

" 118. (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the the manner prescribed by section 21 or section 22."

Amendment of section 121 of the Principal Ordinance.

3. Section 121 of the Principal Ordinance is hereby amended by substituting the word " release " for the word " discharge " in the second line of the proviso to sub-section (1) of the section.

Amendment of section 184 of the Principal Ordinance.

4. Section 184 of the Principal Ordinance is hereby amended by substituting for sub-section (3) thereof the following :—

" (2) If a witness asks that his evidence be read over to him the magistrate shall cause such evidence to be

read over to him in a language which he understands. The magistrate shall inform each witness that he is entitled to have his evidence read over to him."

Amendment of section 185 of the Principal Ordinance.

5. Section 185 of the Principal Ordinance is hereby amended by substituting the words " a language which he understands " for the words " the language of the court " in sub-section (1) of the section, and the word " English " for the words " the language of the court " in sub-section (2) of the section.

Amendment of section 190 of the Principal Ordinance.

6. Section 190 of the Principal Ordinance is hereby amended by deleting the words " but shall not commit him to prison unless the charge has been made on oath " at the end of the section.

Amendment of section 193 of the Principal Ordinance.

7. Section 193 of the Principal Ordinance is hereby amended by deleting the words " if the charge has been made on oath, but not otherwise " in the sixth and seventh lines of the section and by substituting the word " release " for the word " discharge " in the eighth line of the section, and by substituting the following words for the proviso at the end of the section :—

" Provided that no such adjournment shall be for more than thirty clear days, or if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day."

8. The following section is hereby inserted in the Principal Ordinance as section 196A :—

Discharge of accused person when no case to answer.

" 196A. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith order him to be discharged as to that particular charge."

Repeal and replacement of section 277 of the Principal Ordinance.

9. Section 277 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Illness of Juror.

" 277. If in the course of a trial by jury, at any time before the delivery of the verdict, any juror dies or

is discharged by the court as being through illness incapable of continuing to act or for any other reason, the jury shall nevertheless, so long as the number of its members is not reduced by more than one, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. Where one juror has died or has been discharged as aforesaid the verdict of eleven jurors in a trial for murder or treason, or of eight jurors in a trial for any other offence shall be deemed to be the unanimous verdict of the jury."

Amendment of section 344 of the Principal Ordinance.

10. Section 344 of the Principal Ordinance is hereby amended by substituting the words " reheard before three judges " for the word " dismissed " at the end of the section.

Amendment of First Schedule to the Principal Ordinance.

11. The First Schedule to the Principal Ordinance is hereby amended—

(a) by deleting all reference to section 110 of the Penal Code and substituting therefor the following—

110	Escape.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.

(*b*) by deleting from the entry in the fourth column thereof relating to section 123 of the Penal Code the words " or for any term not less than three years ";

No. 10 of 1930.

(*c*) by substituting in the fourth column thereof, in the entries relating to sections 252 and 255 of the Penal Code the word " three " for the word " five " and the word " ten " for the word " seven " respectively;

No. 10 of 1930.

(*d*) by substituting in the fourth column thereof, in the entry relating to section 256 of the Penal Code the words " Imprisonment for seven years " for the word " ditto ";

No. 10 of 1930.

(*e*) by adding, in their respective numerical positions, the following—

115A	False information to public servant.	May arrest without warrant.	Imprisonment for six months or fine of £50.	Any magistrate.
146A	Indecent assault on boys under 14.	May arrest without warrant	Imprisonment for seven years with or without corporal punishment.	Subordinate court of the first class.
146B	Indecent practices between males.	May arrest without warrant.	Imprisonment for five years with or without corporal punishment.	Subordinate court of the first class.
208A	Killing unborn child.	May arrest without warrant.	Imprisonment for life	
267A	Fraudulent disposition of mortgaged goods.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
294A	False declaration for passport.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.

No 47 OF 1930.

Date of assent. [15TH DECEMBER, 1930.]

An Ordinance to Amend the Public Health (Division of Lands) Ordinance, 1928.

Date of commencement. *15th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Public Health (Division of Lands) (Amendment) Ordinance, 1930 ", and shall
No. 32 of 1928. be read as one with the Public Health (Division of Lands) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance."

Amendment of section 6 of the Principal Ordinance. **2.** Section 6 of the Principal Ordinance is hereby amended—

(1) by the insertion after the word " acres " in the sixth line thereof of the following :—

" or of building or of permitting the building of separate dwellings or shops on his land in such a manner that any such dwelling or shop is less than three hundred yards distant from any other dwelling or shop on the same piece or parcel of land " ;

(2) by the insertion of the following proviso after sub-section (3) :—

" Provided that a division of land which is required for the purpose of adjusting the boundaries between two or more holdings of land ; or in any case where a portion of land is to be severed from one holding of land for the purpose of being added to another holding of land, and is to be consolidated in the title for that holding of land to which it is to be added, or in respect of which an endorsement is made on or a covenant is inserted in the deed of assignment to the effect that it may not be sold, leased or otherwise disposed of except as an inseparable portion of the holding of land to which it is to be added ; and in any case where a portion of land is to be

surrendered for road or road widening purposes; then such division of land shall not be deemed to be a division of land for the purpose of this Ordinance ".

Amendment of section 9 of the Principal Ordinance.

3. Section 9 of the Principal Ordinance is hereby amended—

(1) by the deletion of the last five words of the section and the substitution therefor of the following :—

" or, having regard to the health, amenity or convenience of the neighbourhood, that any division of land shown on the plan is unsuitable it may refuse the application or may approve it in part " ;

(2) by the addition at the end of the section of the following :—

" If the Board is of opinion that any area or areas of land shown on the plan are unsuitable for building; or, having regard to the health, amenity or convenience of the neighbourhood that any such area or areas should be reserved for any special purpose, the Board may, in approving the application in whole or in part, impose such conditions as to the reservation of such area or areas as it thinks fit.

Any person who contravenes or fails to comply with any condition imposed by the Board under this section shall be deemed to have contravened or failed to comply with the provisions of this Ordinance ".

Amendment of section 12 of the Principal Ordinance.

4. Section 12 of the Principal Ordinance is hereby amended by the insertion after the word " Ordinance " in the second line thereof of the following :—

" or shall have approved an application subject to conditions as provided in section 9 of this Ordinance ".

No. 48 OF 1930

Date of assent. [15TH DECEMBER, 1930.]

An Ordinance to Provide for the Imprisonment within the Colony of Persons Sentenced to Imprisonment elsewhere.

Date of commencement. *15th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title. **1.** This Ordinance may be cited as "the Foreign Prisoners Detention Ordinance, 1930."

Authority to imprison in the Colony persons sentenced by a competent court outside the Colony. **2.** (1) Any person who has been or may hereafter be sentenced to imprisonment by any court of competent jurisdiction elsewhere than in the Colony may, with the consent of the Governor first obtained, be sent into, imprisoned and detained in the Colony until the expiration of such sentence, and shall be treated in every respect as if the sentence had been pronounced by a court of competent jurisdiction within the Colony.

Evidence of sentence, etc. (2) A certificate signed by the Colonial Secretary setting forth that from documents deposited in his office it appears that the person named in such certificate has been sentenced to imprisonment by a competent court, and for the term named in such certificate, and that the Governor has consented to such person being imprisoned in the Colony, shall in all courts and places and for all purposes be deemed to be conclusive evidence at all times during the continuance of such term, that such person is duly imprisoned under and by virtue of the provisions of this Ordinance.

Power to order return of prisoner at any time. **3.** The Governor may at any time order that a person imprisoned and detained under the provisions of this Ordinance be returned to the place in which he was sentenced to imprisonment.

Prisoner to be returned before expiration of sentence. **4.** Every person imprisoned and detained under the provisions of this Ordinance shall be returned to the place in which he was sentenced to imprisonment at such time as will enable him to be there discharged at the expiration of his sentence.

No. 49 OF 1930.

[15TH DECEMBER, 1930.] Date of assent.

An Ordinance to Apply a Sum of Money for the Service of the Year ending the 31st day of December, 1931.

15th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the 1931 Appropriation Ordinance, 1930." Short title.

2. The Public Revenue for the year 1931, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the year ending the 31st day of December, one thousand nine hundred and thirty-one, the sum of three million four hundred and forty-two thousand nine hundred and thirty-two pounds. Public Revenue charged.

3. The money granted by this Ordinance shall be applied for the purposes and services expressed in the Schedule annexed hereto. Application of money granted.

4. The Treasurer of the Colony and Protectorate of Kenya is hereby authorised and required from time to time upon the warrant or order of the Governor to pay out of the revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the Schedule, the said sum of three million four hundred and forty-two thousand nine hundred and thirty-two pounds, which will come in course of payment during the year ending on the 31st day of December, one thousand nine hundred and thirty-one. Treasurer's authority for payment.

SCHEDULE.

		£
I.	His Excellency the Governor	18,000
II.	Administration	287,413
IIa.	Administration, Extraordinary	1,500
III.	Agricultural Department	172,957
IIIa.	Agricultural Department, Extraordinary	1,360
IV.	Audit Department	21,439

V.	Coast Agency	6,744
Va.	Coast Agency, Extraordinary	250
VI.	Conference of East African Governors...	1,250
VII.	Customs Department	49,948
VIII.	Education Department	208,624
VIIIa.	Education Department, Extraordinary...	6,733
IX.	Forest Department	40,686
X.	Game Department	12,548
XI.	Interest	72,880
XII.	Judicial Department	36,482
XIII.	Legal Department	9,597
XIV.	Local Government Contribution to Local Authorities	97,467
XIVa.	Local Government Contribution to Local Authorities, Extraordinary	13,165
XV.	Medical Department	252,061
XVa.	Medical Department, Extraordinary ...	1,638
XVI.	Military	114,411
XVIa.	Military Expenditure, Extraordinary ...	1,600
XVII.	Miscellaneous Services	76,126
XVIIa.	Miscellaneous Services, Extraordinary ...	7,840
XVIII.	Pensions and Gratuities	124,800
XIX.	Police	174,696
XIXa.	Police, Extraordinary	3,143
XX.	Post Office and Telegraphs	177,521
XXa.	Post Office and Telegraphs, Extraordinary	11,750
XXI.	Printing and Stationery	39,739
XXII.	Prisons	51,895
XXIII.	Public Debt Funded	815,000
XXIV.	Public Works Department	155,352
XXV.	Public Works Recurrent...	183,450
XXVI.	Registrar-General's Department ...	6,117
XXVII.	Rent and Interest to His Highness the Sultan of Zanzibar	16,000
XXVIII.	Secretariat and Legislative Council ...	22,850
XXIX.	Statistical Departments	26,306
XXX.	Survey and Registration Department ...	39,765
XXXI.	Trade and Information Office	4,850
XXXII.	Treasury	27,257
XXXIII.	Public Works Extraordinary	49,722
	Total	£3,442,932

NO. 50 OF 1930.

[15TH DECEMBER, 1930.] Date of assent.

An Ordinance to Amend the Local Government (Municipalities) Ordinance, 1928.

1st September, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council Council thereof, as follows :—

1. This Ordinance may be cited as " the Local Government (Municipalities) (Amendment) Ordinance, 1930 ", and shall be read as one with the Local Government (Municipalities) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance ". Short title. No. 19 of 1928.

2. Section 52 of the Principal Ordinance is hereby amended by inserting therein the following as paragraph (10A) :— Amendment of section 52 of the Principal Ordinance.

(10A) To make grants of money to committees or other associations of persons appointed or established for the relief of unemployed or necessitous persons. Relief of unemployed.

3. This Ordinance shall be deemed to have come into operation on the first day of September, 1930. Date of operation.

NO. 51 OF 1930.

Date of assent. [24TH DECEMBER, 1930.]

An Ordinance to make provision with respect to Merchant Shipping and matters relating thereto.

Date of commencement. *24th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Shipping Ordinance, 1930."

Interpretation. **2.** In this Ordinance, unless the context otherwise requires :—

" Coasting trade " means trade carried on a sea voyage from any place on the coast of the Colony to any other place within the limits of the coasts of the Colony, of Tanganyika Territory, and of Zanzibar;

" Consular officer " means any Consul General, Vice-Consul, Consular Agent or other officer recognised by the Governor as a consular officer of a foreign state;

" Foreign-going ship " includes every ship employed in trading or going between some place or places in the Colony, and some place or places situate beyond the following limits, that is to say, the coasts of Zanzibar and Tanganyika Territory;

" Harbour " includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship and unship goods or passengers;

" High Commissioner " means the High Commissioner for Transport established by the Kenya and Uganda (Transport) Orders in Council, 1925 and 1927;

" Magistrate " means a magistrate holding a court of the first class or second class;

" Master " include every person (except a pilot) having command or charge of ıy ship;

" Passenger " includes any person carried in a ship other than the master and crew and the owner, his family and servants;

" Port " includes place;

" Port Captain " means the officer appointed by the High Commissioner to take charge under the General Manager of the marine branch of a harbour;

" Port Manager " means the Port Manager appointed by the High Commissioner to take charge control and management under the General Manager of the marine and shore department of the Kenya and Uganda Railways and Harbours, including the port and marine department established under the Port Ordinance; *Cap.* 107.

" Port Officer " means the officer appointed to take charge of a particular port under the General Manager;

" Seaman " includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

" Ship " includes every description of vessel used in navigation, not propelled by oars, and not the property of His Majesty;

" Statute adult " means any person of the age of twelve years or upwards, and two persons between the ages of one and twelve years shall be treated as one statute adult;

" Steamship " means any ship propelled by machinery;

" Tidal water " means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour;

" The Merchant Shipping Act " means the Merchant Shipping Act, 1894 (57 and 58 Victoria, Chapter 60), and any Act in amendment thereof or in substitution therefor.

Save as herein provided, terms relating to shipping shall have the same meaning as in the Merchant Shipping Act.

PART I.

DETENTION OF UNSAFE SHIPS.

Governor in Council may fix scale of fees.

3. It shall be lawful for the Governor in Council to fix the fees payable for the survey or inspection of ships, for obtaining the surveyor's certificate of seaworthiness hereinafter mentioned, or for any other purpose under this Ordinance or under the Merchant Shipping Act; and the fees so fixed shall be paid in such manner, and to such person or persons, or for the public uses of the Colony, according as the Governor in Council shall direct.

British Ships.

Offence to send unseaworthy ship to sea

4. (1) Every person who sends or attempts to send, or is party to sending or attempting to send a British ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand pounds and in default of payment to imprisonment of either description for a period not exceeding one year, or to imprisonment of either description for a period not exceeding two years, or to both such fine and imprisonment, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

(2) Every master of a British ship who knowingly takes the same to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand pounds and in default of payment to imprisonment of either description for a period not exceeding one year, or to imprisonment of either description for a period not exceeding two years, or to both such fine and imprisonment, unless he proves that her going to sea in such an unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purposes of giving such proof he may give evidence in the same manner as any other witness.

(3) A prosecution under this section shall not be instituted without the sanction of the Governor.

Obligation of shipowner to crew with respect to use of reasonable efforts to secure seaworthiness.

5. In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship, and the master and every agent charged with the loading of the ship, or the preparing of the ship for sea, or the sending of the ship to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep her in a seaworthy condition for the voyage during the same : Provided that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

Power to detain unsafe ships, and procedure for detention.

6. (1) Where a British ship, being at any place on the coast of the Colony, is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipments, or machinery, or by reason of undermanning, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as " unsafe ") may be provisionally detained for the purpose of being surveyed, or for ascertaining the sufficiency of her crew and either finally detained or released, as follows :—

(*a*) The Governor, if he has reason to believe on complaint or otherwise, that a ship is unsafe, may provisionally order the detention of the ship for the purpose of being surveyed, or for ascertaining the sufficiency of her crew;

(*b*) When a ship has been provisionally detained, there shall be forthwith served on the master of the ship

a written statement of the grounds of her detention, and the Governor may, if he thinks fit, appoint some competent person or persons to survey the ship and report thereon to him accordingly;

(*c*) The Governor, on receiving such report, may either order the ship to be released, or if in his opinion the ship is unsafe may order her to be finally detained, either absolutely or until the performance of such conditions, with respect to the execution of repairs or alterations, or the unloading or reloading of cargo or the manning of the ship as the Governor thinks necessary for the protection of human life;

(*d*) Before the order for final detention is made, a copy of such report shall be served upon the master of the ship, and within seven days after such service the owner or master of the ship may appeal in the prescribed manner to the Court of Survey as hereinafter provided for the port or district where the ship is detained;

(*e*) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the Court of Survey to be appointed as hereinafter provided, and in such case if the surveyor and assessor agree, the Governor shall cause the ship to be detained or released accordingly, but if they differ the Governor may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(*f*) Where a ship has been provisionally detained, the Governor may at any time, if he thinks it expedient, refer the matter to the Court of Survey for the port or district where the ship is detained;

(*g*) The Governor may at any time, if satisfied that a ship detained under this Ordinance is not unsafe, order her to be released either upon or without any conditions.

(2) The Governor may from time to time appoint a sufficient number of fit and proper persons to be officers for the better execution of this section.

(3) Any officer so appointed (in this Ordinance referred to as a " detaining officer ") shall have the same power as the Governor has under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her, and, if he thinks that a ship so detained by him is not unsafe, may order her to be released.

(4) A detaining officer shall forthwith report to the Governor any order made by him for the detention or release of a ship.

Compensation for improper detention.

7. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner or master, for the provisional detention of a ship under this Part of this Ordinance as an unsafe ship, the Government of the Colony shall be liable to pay to the owner compensation not exceeding fifty cents for each ton of the ship's net registered tonnage for each twenty-four hours' detention, or part thereof.

Costs of detention and survey of ship.

8. If a ship is finally detained under this Ordinance, or if it appears that a ship provisionally detained was, at the time of such detention, unsafe within the meaning of this Ordinance, the owner of the ship shall be liable to pay the costs of and incidental to the detention and survey of the ship, which costs shall be recovered with the costs of the action on complaint of the surveyor in an action of debt. For the purposes of this Ordinance the costs of and incidental to any proceedings before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Government, shall be deemed to be part of the costs of the detention and survey of the ship.

Power to require from complainant security for costs.

9. Where a complaint is made to a detaining officer that a British ship is unsafe, the detaining officer may, if he thinks fit, require the complainant to give security to his satisfaction for the costs incidental to the detention and survey which the owner of the ship may not become liable to pay under the last preceding section : Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship and is not, in the opinion of the

detaining officer, frivolous or vexatious, such security shall not be required, and the detaining officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under this Ordinance.

Supplemental provisions as to detention of ship.

10. (1) A detaining officer shall have for the purpose of his duties under this Ordinance the same powers as an inspector appointed by the Board of Trade in England under the Merchant Shipping Act.

(2) An order for the detention of the ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(3) When a ship has been detained under this Ordinance she shall not be released by reason of her British register being subsequently closed.

(4) For the purposes of a survey of a ship under this Ordinance any person authorised to make the same may go on board the ship and inspect the same and every part thereof and the machinery, equipments and cargo and may require the unloading or removal of any cargo, ballast or tackle.

(5) The provisions of the Merchant Shipping Act, with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply as if those provisions were herein enacted, with the substitution for the inspector of any magistrate, assessor, officer or surveyor who under this Ordinance has the same powers as an inspector, or has authority to survey a ship.

Survey of ships alleged by seamen to be unseaworthy.

11. (1) Whenever in any proceeding against any seaman or apprentice belonging to any ship for the offence of desertion, or absence without leave or for otherwise being absent from his ship without leave, it is alleged by one-fourth, or if their number exceeds twenty by not less than five, of the seamen belonging to the ship that the ship is by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in the ship is insufficient, the court having cognizance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of the allegation, and shall for that purpose receive the evidence of the persons making the same, and may summon any other witnesses whose evidence they may think it desirable to hear, and shall, if

satisfied that the allegation is groundless, adjudicate in the case, but if not so satisfied shall before adjudication cause the ship to be surveyed.

(2) A seaman or apprentice charged with desertion, or with quitting his ship without leave, shall not have any right to apply for a survey under this section unless he has before quitting his ship complained to the master of the circumstances so alleged in justification.

(3) For the purposes of this section the court shall require any surveyor of ships appointed under this Ordinance or, if such a surveyor or persons cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the court, competent to deal with the special circumstances of the case, then any other impartial surveyor appointed by the court, and having no interest in the ship, her freight or cargo, to survey the ship, and to answer any question concerning her which the court think fit to put.

(4) Such surveyor or other person shall survey the ship and make his written report to the court, including an answer to every question put to him by the court, and the court shall cause the report to be communicated to the parties, and, unless the opinions expressed in the report are proved to the satisfaction of the court to be erroneous, shall determine the questions before them in accordance with those opinions.

(5) Any person making a survey under this section shall for the purposes thereof have all the powers conferred upon surveyors by section 38 of this Ordinance.

(6) The costs (if any) of the survey shall be paid in the first instance by the Government at a rate not exceeding the rate prescribed in the scale of charges made by the Governor in Council under section 3 of this Ordinance.

(7) If it is proved that the ship is in a fit condition to proceed to sea, or that the accommodation is sufficient, as the case may be, the costs of the survey shall be paid by the person or persons upon whose demand, or in consequence of whose allegation the survey was made, and may be deducted by the master or owner out of the wages due or to become due to the person or persons who made the demand and shall be paid over to the Government of the Colony.

(8) If it is proved that the ship is not in a fit condition to proceed to sea, or that the accommodation is insufficient, as the case may be, the master or owner of the ship shall pay

the costs of the survey to the Government of the Colony, and it shall be lawful for the said Government to detain the ship until such costs are paid, and in default of payment within six months to sell the ship and to deduct from the purchase price such costs together with all dues and charges which would be payable by such ship had she voluntarily remained in the port where she was detained.

(9) The master or owner shall also be liable to pay to the seaman or apprentice, who has been detained in consequence of the said proceedings before the court under this section, such compensation for his detention as the court may award.

Proportion of passengers to tonnage of ship.

12. No British ship proceeding on a journey shall carry a greater number of persons, including every individual on board, than in the proportion of one statute adult for every ton of her gross tonnage, and if there shall be on board of any ship at and after the time of clearance a greater number of persons than in the proportion aforesaid, the master of such ship shall be liable to a penalty not exceeding twenty pounds for each person so in excess.

Duty of owner and master to provide food, water and life-saving appliances.

13. It shall be the duty of the owner and master of every British ship to see that his ship is provided with the proper supply of food and water and of such boats, life-jackets or other appliances for saving life at sea as may be prescribed by rules under this Ordinance.

Facilities to be given to proper officers for inspection of ship, etc.

14. The master of every British ship shall afford to the Port Captain, the Port Officer and the detaining officer every facility for inspecting such ship and for communicating with any passenger therein and for ascertaining that the provisions of this Ordinance, so far as the same may be applicable to such ship, have been duly complied with, and any master who shall fail to comply with the requirements of this section shall be liable to a penalty not exceeding fifty pounds.

Detention of ship.

15. If the Port Captain or Port Officer shall have good reason to believe that any ship about to depart from any port or place within the Colony on a voyage, has not complied with the provisions of this Ordinance so far as the same may be applicable to such ship he may detain such ship until such time as he can communicate with the detaining officer.

Compliance with Board of Trade certificate or rules is compliance with the Ordinance.

16. Compliance with the terms of any certificate in force issued to a ship by the Board of Trade, and compliance by a British ship with any rules for the time being in force made by the Board of Trade, shall be deemed to be compliance with this Ordinance.

Governor in Council may make rules as to diet and life-saving appliances.

17. The Governor in Council may, from time to time, make rules with respect to :—

(*a*) The arranging of British ships into classes, having regard to the services in which they are employed, to the nature and duration of the voyage, and to the number of persons carried;

(*b*) The scale of diet and water for steerage passengers on ships: Provided that the requirements of this Ordinance respecting food shall not (except as to the provision of a reserve supply of water and of biscuit) be applicable to ships carrying passengers who have contracted to supply their own provisions;

(*c*) The number and description of the boats, life-jackets or other appliances for saving life at sea to be carried by British ships according to the class in which they are arranged, and the mode of their construction, also the equipments to be carried by the boats and the method to be provided to get the boats and other life-saving appliances into the water;

(*d*) The quantity, quality and description of buoyant apparatus to be carried on British ships carrying passengers, either in addition to or in substitution for boats, life-jackets or other appliances as aforesaid.

Ships Other than British Ships.

Application of provisions of Ordinance to ships other than British ships.

18. Where a ship other than a British ship, being at any place on the coast of the Colony, is unsafe by reason of the defective condition of her hull, equipment, or machinery, or by reason of overloading or improper loading or by reason of undermanning, the provisions of this Ordinance with respect to the detention of ships shall apply with the following modifications :—

(1) A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer, should there be one, for the state to which the ship belongs, or should there not be one, on the consignee of the ship;

(2) Where such ship has been provisionally detained the consular officer, should there be one, or should there not be one the consignee of such ship acting at the request of the owner or master thereof, may require that the person appointed by the Governor to survey the ship shall be accompanied by such person as the consular officer or consignee may select, and in such case, if the surveyor and such person agree, the Governor shall cause such ship to be detained or released accordingly, but if they differ, the Governor may act as if the requisition had not been made, and the consular officer or consignee, as the case may be, shall have the like appeal to a Court of Survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship.

Saving for ship coming in under stress of weather, etc.

19. The foregoing provisions of this Ordinance shall not affect a ship, other than a British ship, which is not bound to a port of the Colony and which comes to any place on the coast of the Colony for any purpose other than the purpose of embarking or landing passengers or taking in or discharging cargo, or taking in bunker coal, oil fuel or any material for the purpose of refuelling, or taking in water or stores or mails.

PART II.

SPECIAL SHIPPING ENQUIRIES AND COURTS.

Enquiries and Investigations as to Shipping Casualties.

Enquiry to be instituted in case of wreck and casualty.

20. In any of the cases following, that is to say :—

(1) Whenever any ship is lost, abandoned, stranded, or damaged on or near the coasts of the Colony or in the course of a voyage to a port within the Colony;

(2) Whenever any ship causes loss or material damage to any other ship on or near such coasts;

(3) Whenever any ship causes loss or material damage to any other ship, and such ships are, or either of them is, in the course of a voyage to a port within the Colony;

(4) Whenever by reason of any casualty happening to or on board of any ship on or near such coasts, in the course of a voyage to a port within the Colony, loss of life ensues;

(5) Whenever any such loss, abandonment, stranding, damage, or casualty happens elsewhere, and any

competent witnesses thereof arrive or are found at any place in the Colony;

(6) Whenever any such loss, abandonment, stranding, damage, or casualty occurs in any part of the world to a British ship registered in the Colony,

it shall be lawful for the Port Manager or for any other person appointed for the purpose by the Governor to make enquiry respecting such loss, abandonment, stranding. damage, or casualty.

Powers of officers making enquiry.

21. The Port Manager, or person appointed for the purpose of making enquiry pursuant to this Ordinance, shall have the following powers, that is to say :—

(1) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipment, or articles on board thereof to which the provisions of this Ordinance apply, not unnecessarily detaining or delaying her from proceeding on any voyage;

(2) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make;

(3) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any enquiries he thinks fit to make;

(4) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose;

(5) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpoena to give evidence before any court of record; and in case of any dispute as to the amount of such expenses, the same shall be referred by the Port Manager or person making enquiry pursuant to this Ordinance, to a Judge of the Supreme

Court, who, on a request made to him for that purpose under the hand of such Port Manager or other person shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before such Port Manager or other person after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make and subscribe any declaration which such Port Manager or other person is hereby empowered to require, shall be liable, for each such offence, on conviction before a magistrate, to a penalty not exceeding twenty-five pounds.

Obstructing officer making enquiry.

22. Every person who wilfully impedes the Port Manager or person making enquiry pursuant to this Ordinance in the execution of his duty, whether on board any ship or elsewhere, shall be liable, on conviction before a magistrate, to a penalty not exceeding twenty-five pounds, and may be seized and detained by such Port Manager or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before a magistrate.

Formal investigation before magistrate.

23. If it appears to the Port Manager, either upon or without any such preliminary enquiry as aforesaid, that a formal investigation is requisite or expedient, he shall apply to a magistrate to hear the case; and such magistrate shall thereupon make order for such investigation and proceed to hear and try the case, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which he has power to make a conviction or order, or as near thereto as circumstances permit; and it shall be the duty of the Port Manager to superintend the management of the case, and to render such assistance to the magistrate as is in his power; and, upon the conclusion of the case, the magistrate shall send a report to the Governor containing a full statement of the case and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations (if any) as he may think fit. The Governor shall forward every report sent to him under this section to the Colonial Office for transmission to the Board of Trade.

Assessors and procedure on formal investigation.

24. (1) A magistrate holding a formal investigation into a shipping casualty shall hold the same with the assistance of an assessor or assessors of nautical engineering or other special skill or knowledge, to be appointed by the Governor.

(2) The Governor, when of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master, mate or engineer, shall appoint not less than two persons having experience in the merchant service to be assessors.

(3) Each assessor shall either sign the report made on the investigation or report to the Governor his reason for his dissent therefrom.

Costs.

25. The magistrate may make such order with respect to the costs of such investigation or any portion thereof as he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in proceedings before him; and the Governor, out of the Treasury, may, if in any case he think fit so to do, pay the expense of any such investigation, and may pay to such assessor or assessors as aforesaid such remuneration as he thinks fit.

General power as to incompetency or misconduct.

26. If the Governor has reason to believe that any master, mate, or engineer is from incompetency or misconduct unfit to discharge his duties, he may, when the incompetency or misconduct has occurred on board of a British ship on or near the coasts of the Colony or on board of a British ship in the course of a voyage to a port within the Colony, or when the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the Colony, or when the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board of such British ship is found in the Colony, direct the magistrate to institute an investigation, and such magistrate shall conduct the investigation, and may summon the master, mate or engineer to appear, and shall give him full opportunity of making a defence, either in person or otherwise, and such magistrate shall for the purpose of such investigation have all the powers given by section 21 of this Ordinance to the Port Manager, and such magistrate may make such order with respect to the costs of such investigation as he may deem just.

Magistrate may suspend certificates.

27. A magistrate making an investigation under this Ordinance may cancel or suspend the certificate of any master, mate, or certificated engineer whose conduct is called in question in the course of such investigation, if it appears to such magistrate that such master, mate or certificated engineer has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss, abandonment, or stranding of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default: Provided that:—

(1) The magistrate shall, at the conclusion of the case, or as soon afterwards as possible, state in open court the decision to which he may have come with respect to cancelling or suspending certificates, and shall in all cases send the Governor a full report upon the case, with the evidence, and shall also, if he determines to cancel or suspend any certificate, forward such certificate to the Governor, and such report and evidence, together with the certificate (if any) shall forthwith be forwarded by the Governor to the Colonial Office for transmission to the Board of Trade.

(2) It shall be lawful for the Board of Trade, if they think the justice of the case requires it, to re-issue and return any certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to grant a certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended.

(3) No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor unless one assessor at least expresses his concurrence in such cancellation or suspension.

(4) Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person that person shall have the opportunity of making a defence.

(5) Such investigations shall be held in some public building or other suitable place not being a court ordinarily used as a magistrate's court, unless no other suitable place is available.

Powers of court of enquiry.

28. The court or tribunal authorised by sections 24 and 27 of this Ordinance to make enquiry or to hold investigations shall have the same jurisdiction as such court or tribunal would have had if such loss, abandonment, stranding, damage, or casualty, or incompetency or misconduct, had occurred within the ordinary jurisdiction of such court or tribunal, but subject to all provisions, restrictions, and conditions which would have been applicable if they had so occurred :

Provided that no enquiry shall be held under this Ordinance into any loss, abandonment, stranding, damage or casualty, or into any charge of incompetency or misconduct, which has once been the subject of such an enquiry and has been reported on by any competent court or tribunal in any part of His Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a Naval Court :

Provided also that where any enquiry has been commenced in the United Kingdom no enquiry shall be made in the same case under the authority of this Ordinance.

Power to require delivery of certificate.

29. Every master or mate or engineer whose certificate is suspended or cancelled in pursuance of this Ordinance shall, upon demand of the Governor or the Court or tribunal by which the case is investigated or tried, deliver his certificate to him or them, and such certificate shall be forwarded to the Colonial Office for transmission to the Board of Trade. If any master, mate, or engineer fails to deliver his certificate when required so to do under this section, he shall be liable, on conviction before a magistrate, to a penalty not exceeding fifty pounds.

Limitation power to enquire.

30. So much of this Ordinance as relates to enquiries into wrecks, casualties, incompetency, and misconduct shall not apply to any ships of His Majesty's Navy, or of any foreign navy.

Courts of Survey.

Constitution of Court of Survey.

31. (1) The Court of Survey for the Colony shall consist of such magistrate as may be appointed by the Governor either generally or in each case sitting with two assessors.

(2) The assessors shall be persons of nautical engineering or other special skill and experience; one of them shall be nominated by the Governor, either generally or in each case, and the other shall be summoned in accordance with the rules

under this Ordinance by the Registrar of the Supreme Court out of a list of persons periodically nominated for the purpose by resolution of the Legislative Council, or, if there is no such list, shall be appointed by the magistrate.

(3) The Registrar of the Supreme Court, or such other fit person as the Governor may from time to time appoint, shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Governor, immediately summon the Court in the prescribed manner to meet forthwith.

(4) The name of the registrar and his office, together with the rules made under this Ordinance relating to the Court of Survey, shall be published in the prescribed manner.

Powers and procedure of Court of Survey.

32. With respect to the Court of Survey the following provisions shall have effect :—

(1) The case shall be heard in open court.

(2) The magistrate and each assessor may survey the ship, and shall have, for the purposes of this Ordinance, all the powers of the Port Manager making enquiry under this Part of this Ordinance, and the provisions of this Part with respect to persons who wilfully impede the Port Manager or disobey a requisition or order of the Port Manager shall apply to persons wilfully impeding or disobeying the requisition or order of a magistrate or assessor.

(3) The magistrate may appoint any competent person or persons to survey the ship and report thereon to the court.

(4) The magistrate shall have the same power as the Governor has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(5) The owner and master of the ship, and any person appointed by the owner or master, and also any person appointed by the Governor, may attend at any inspection or survey made in pursuance of this section.

(6) The magistrate shall send to the Governor the prescribed report, and each assessor shall either sign the report or report to the Governor the reasons for his dissent.

Rules for Court of Survey.

33. The Governor may make general rules to carry into effect the provisions of this Ordinance with respect to the Court of Survey, and in particular with respect to the summoning of and procedure before the Court, the remuneration of assessors, the requiring on an appeal of security for costs and damages, the amount and application of fees, and the publication of the rules.

PART III.

Survey of Steamships.

Steamship not to carry passengers without a certificate of survey.

34. A steamship shall not carry more than twelve passengers, between places in the Colony, or to or from any place in the Colony from or to any place out of the Colony, unless she has a certificate of survey under this Ordinance in force and applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed.

Exception of certain steamships.

35. Nothing in the last preceding section shall apply to—

(*a*) any steamship having a certificate of survey granted by the British Board of Trade or any British Colonial Government, unless it appears from the certificate that it is inapplicable to the voyage on which the steamship is about to proceed, or the service on which she is about to be employed, or unless there is reason to believe that the steamship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient;

(*b*) any steamship belonging to or in the service of His Majesty;

(*c*) any steamship carrying passengers during the interval between the time at which her certificate or survey under this Ordinance expires, and the time at which it is first practicable to have the certificate renewed:

Provided, however, that in the case of a steamship in possession of a passenger certificate as described in paragraph (*a*) of this section, and employed in carrying passengers on regular voyages between sea or river or lake ports in the Colony, and which does not proceed to the country of origin of her certificate within three months after the expiration of such certificate, but continues on her service between sea or lake or river ports of the Colony, the owner of such steamship shall cause her to be surveyed at Mombasa or at such other place as the Governor may appoint.

Detention of ships.

36. If any steamship for which a certificate of survey is required by section 34 of this Ordinance, attempts to leave any port of the Colony whether on sea, lake or river without a certificate, the Port Captain or Port Officer may detain her until she obtains a certificate.

Appointments of surveyors.

37. (1) The Governor may, when necessary, appoint so many persons as he thinks fit to be surveyors of ships for the purpose of this Ordinance, at the Port of Mombasa or elsewhere.

(2) The Port Captain shall be principal ship surveyor, and shall, in the absence of a permanent engineer surveyor, have power to nominate and employ an engineer surveyor to aid and assist him in the surveying or inspecting of any steamship.

Powers of surveyors.

38. (1) A surveyor of ships—

(*a*) may, in the execution of his duties, go on board any steamship at all reasonable times and inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, or any certificates of the master, mate or engineer to which the provisions of the Merchant Shipping Act or any of the Regulations made under that Act apply, without, however, unnecessarily detaining or delaying the ship proceeding on any voyage; and

(*b*) may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make; and

(*c*) may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for the purpose of his report, and may require answers or returns to any inquiries he thinks fit to make; and

(*d*) may require and enforce the production of all books, papers, or documents which he considers important for the purpose of his report; and

(*e*) may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

(2) Every witness summoned under this section shall be allowed such expenses as would be allowed to a witness attending on subpœna to give evidence before any court of record, and in case of any dispute as to the amount of those expenses, the same shall be referred to the Registrar of the Supreme Court, and that officer shall, on request made to him for that purpose under the hand of the surveyor or person having the powers of a surveyor, ascertain and certify the proper amount of those expenses.

(3) If any person refuses to attend as a witness before a surveyor of ships after having been required to do so in manner provided by this section and after having had a tender made to him of the expenses (if any) to which he is entitled under this section, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which a surveyor or person having the powers of a surveyor is hereby empowered to require, that person shall for each offence be liable to a fine not exceeding ten pounds.

(4) If any person hinders any surveyor of ships from going on board any steamship or otherwise impedes him in the execution of his duties under this Ordinance, that person shall, for each offence be liable to a fine not exceeding five pounds.

Fees in respect of surveys.

39. Before a survey under this Ordinance is commenced the owner or master of the steamship surveyed shall pay to the Port Manager or other person appointed by the Governor in that behalf, such fees as may be prescribed by rules made under this Ordinance.

Declaration of surveyor.

40. When a survey under this Ordinance is completed, the surveyor making it shall, if satisfied that he can with propriety do so, give to the owner or master of the steamship surveyed, a declaration of survey in the prescribed form, containing the following particulars :—

(*a*) That the hull and machinery of the steamship are sufficient for the service intended and in good condition;

(*b*) That the boats, lifebuoys, lights, signals, compasses, and shelter for deck passengers are such and in such condition as are required by this Ordinance;

(*c*) The time (if less than one year) for which the hull, equipments and machinery will be sufficient;

(*d*) The limits (if any) beyond which, as regards the hull, equipments and machinery, the steamship is in the surveyor's judgment not fit to ply;

(*e*) The number of passengers which the steamship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on deck and in the cabins; those numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires;

(*f*) That the certificates of master and mate or mates, and engineer or engineers, are such as are required by the Merchant Shipping Act;

(*g*) That the safety-valves and fire-hose are such and in such condition as are required by the Merchant Shipping Act;

(*h*) The limit of the weight to be placed on the safety-valves.

Transmission of declaration.

41. (1) The owner or master to whom a declaration is given under the last preceding section shall, within fourteen days after the date of the receipt thereof, send the declaration to the Port Manager.

(2) If he fails to do so, he shall forfeit a sum not exceeding ten shillings for every day during which the sending of the declaration is delayed, and any sum so forfeited shall be payable on the granting of a certificate in addition to the fee.

Issue of passenger steamer's certificate.

42. (1) On the receipt of the declaration of survey by the Port Manager, the Governor shall, if satisfied that the provisions of this Ordinance have been complied with, cause a certificate stating such compliance to be issued in duplicate through the Port Manager to the owner or master of the steamship surveyed on his applying and paying the proper fees, and other sums, if any, mentioned in this Ordinance as payable on delivery of a certificate.

(2) Such certificate shall be in the form prescribed from time to time, and shall contain the particulars concerning the steamship which paragraphs (*c*), (*d*) and (*e*) of section 40 require the declaration by the surveyor to contain, and any other prescribed particulars.

(3) When a certificate is ready for delivery, the Port Manager shall cause notice thereof to be given by post or otherwise to the owner or master of the steamship to which the certificate relates.

Posting up of certificate.

43. (1) The owner or master of every passenger steamship required to have a passenger steamship's certificate shall forthwith on the receipt of the certificate by him or his agent cause one of the duplicates to be put up in some conspicuous place on board the steamship, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force, and the steamship is in use.

(2) If the owner or master fails without reasonable cause to comply with this section, he shall for each offence be liable to a fine not exceeding ten pounds.

(3) If a passenger steamship plies or goes to sea with passengers on board, and this section is not complied with, then for each offence the owner thereof shall be liable to a fine not exceeding one hundred pounds and the master shall also be liable to a further fine not exceeding twenty pounds.

Cancellation of certificate.

44. A certificate of survey granted under this Ordinance may be cancelled or suspended by the Governor if he has reason to believe—

(*a*) that any declaration of survey on which the certificate was founded has been in any particular made fraudulently or erroneously; or

(*b*) that the certificate has been issued upon false or erroneous information; or

(*c*) that since making the declaration, the hull, equipments or machinery have sustained any injury, or are otherwise insufficient.

Delivery up of certificate.

45. (1) The Governor may require any certificate of survey granted under this Ordinance, which has expired, or has been cancelled or suspended, to be delivered up as he directs.

(2) If any owner or master fails without reasonable cause to comply with such requirements, he shall for each offence be liable to a fine not exceeding ten pounds.

Duration of certificate.

46. A certificate of survey issued under this Ordinance shall not be in force for more than one year from the date of its issue, or any shorter time specified in the certificate, nor after notice is given by the Port Manager to the owner, agent or master of the steamship, that the Governor has cancelled it.

Survey of foreign steamship.

47. When a foreign steamship requires to be furnished with a certificate of survey under this Ordinance, and the Governor is satisfied, by the production of a certificate of survey attested by a British consular officer at the port of survey, that the ship has been officially surveyed at a foreign port, and that the requirements of this Ordinance are proved by that survey to have been substantially complied with, the Governor may, if he thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Ordinance.

Appeal to Court of Survey.

48. (1) If the owner of a steamship feels aggrieved by the declaration of survey of a ship surveyor or engineer surveyor, or by the refusal of such a surveyor to give such a declaration, he may appeal to the Court of Survey for the port or district where the steamer for the time being is, in manner directed by the rules of that court.

(2) On any such appeal the magistrate of the Court of Survey shall report to the Governor on the question raised by the appeal, and the Governor, when satisfied that the requirements of the report and of the foregoing provisions of this Part of this Ordinance have been complied with, may grant a passenger steamship's certificate.

(3) Subject to any order made by the magistrate of the Court of Survey the costs of and incidental to the appeal shall follow the event.

(4) A ship surveyor or engineer surveyor in making a survey of a steamship for the purpose of a declaration of survey shall, if the owner of the steamship so requires, be accompanied on the survey by some person appointed by the owner, and in that case if the surveyor and the person so appointed agree, there shall be no appeal under this section to the Court of Survey.

Ship's draught of water to be recorded.

49. (1) The Governor may, in any case or class of cases in which he thinks it expedient to do so, direct any person appointed by him for the purpose to record, in such manner and with such particulars as he directs, the draught of water of any sea-going ship, as shown on the scale of feet on her stem and stern-post, and the extent of her clear side in feet and inches, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea, and the person so appointed shall thereupon keep that record, and shall forward a copy thereof to the Governor.

(2) That record or copy, if produced out of the custody of the Governor, shall be admissible in evidence.

(3) The master of every sea-going ship registered in the Colony shall, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea, record her draught of water and the extent of her clear side in the official log-book (if any), and shall produce the record to the Port Manager or any chief officer of customs whenever required by him, and if he fails without reasonable cause to produce the record shall for each offence be liable to a fine not exceeding twenty pounds.

(4) The master of a sea-going ship shall, upon the request of any person appointed to record the ship's draught of water, permit that person to enter the ship and to make such inspections and take such measurements as may be requisite for the purpose of the record: and if any master fail to do so, or impedes, or suffers anyone under his control to impede, any person so appointed in the execution of his duty, he shall for each offence be liable to a fine not exceeding five pounds.

(5) In this section the expression " clear side " means the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the register is measured, and the measurement of the clear side is to be taken at the lowest part of the side.

Marking of deck-lines.

50. (1) Every ship registered in the Colony (except ships not being steamships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts, and ships employed exclusively in trading or going from place to place in any river or inland water the whole or part of which is in any British possession, protectorate or any territory in respect of which a mandate is being exercised by His Majesty's Government or the Government of any part of His Majesty's Dominions) shall be permanently and conspicuously marked with lines (in this Ordinance called " deck-lines ") of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships, or as near thereto as is practicable, and indicating the position of each deck which is above water.

(2) The upper edge of each of the deck-lines must be level with the upper side of the deck plank next the waterway at the place of marking.

(3) The deck-lines must be white or yellow on a dark ground, or black on a light ground.

(4) In this section the expression " amidships " means the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the sternpost.

Marking of load-line.

51. (1) The owner of every ship registered in the Colony proceeding on voyage from a port in the Colony (except ships not being steamships under eighty tons register employed solely in the coasting trade, or ships employed solely in fishing, and pleasure yachts) shall, before the time hereinafter mentioned, mark upon each of her sides, amidships within the meaning of the last preceding section, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2) The centre of this disc shall be placed at such level as may be approved by the Governor, below the deck line marked under this Ordinance and specified in the certificate given thereunder, and shall indicate the maximum load-line in salt water to which it shall be lawful to load the ship.

(3) The position of the disc shall be fixed in accordance with the tables used at the time of the commencement of this Ordinance by the Board of Trade in England, subject to such allowance as may be made necessary by any difference between the position of the deck-line marked under this Ordinance and the position of the line from which freeboard is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof as may from time to time be made by the Board of Trade.

Ships with submerged load-lines deemed unsafe.

52. If a ship is so loaded as to submerge in salt water the centre of the disc indicating the load-line, the ship shall be deemed to be an unsafe ship within the meaning of Part I of this Ordinance, and such submersion shall be reasonable and probable cause for the detention of the ship.

Time, etc., for marking of load-line in case of foreign-going vessels.

53. (1) Where a British foreign-going ship proceeds on any voyage from a port in the Colony for which the owner is required to enter the ship outwards, the disc indicating the load-line shall be marked before so entering her, or, if that is not practicable, as soon afterwards as may be.

(2) The owner of the ship shall, upon entering her outwards, insert in the form of entry a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the deck-lines which is above that centre, and if default is made in inserting that statement, the ship may be detained.

(3) The master of the ship shall enter a copy of that statement in the agreement with the crew before it is signed by any member of the crew, and shall not proceed with the engagement of the crew until that entry is made.

(4) The master of the ship shall also enter a copy of that statement in the official log-book.

(5) When a ship to which this section applies has been marked with a disc indicating the load-line, she shall be kept so marked, or, if the mark has been altered abroad in accordance with regulations made by the Board of Trade for the purpose, marked with the mark as so altered until her next return to a port of discharge in the Colony.

(6) Sub-sections (1), (2) and (5) of this section shall apply to all foreign foreign-going ships while they are within any port of the Colony whether the owner is required to enter the ships outward or not, without prejudice to any directions of His Majesty in Council given under section 445 of the Merchant Shipping Act, in the case of ships of any foreign country in which the regulations in force relating to overloading and improper loading are equally effective with the provisions of the Merchant Shipping Act.

(7) In the case of a ship which the owner is not required to enter outwards—

(*a*) the disc indicating the load-line shall be marked before clearance for the ship is demanded;

(*b*) the master shall prepare a statement similar to that required to be inserted in the form of entry under sub-section (2) of this section and in the case of a British ship shall enter a copy of the statement in the agreement with the crew and in the official log-book, and sub-sections (3) and (4) of this section shall apply accordingly;

(*c*) the master shall deliver a copy of the statement to the officer of customs from whom a clearance for the ship is demanded, and a clearance shall not be granted until the statement is so delivered.

(8) Where the certificate referred to in sub-section (4) of section 56 of this Ordinance (which relates to regulations as to load-line) is required to be delivered, the provisions of this section as to the statement to be prepared by the master shall not take effect.

Time, etc., for marking of load-line in case of coasting vessels.

54. (1) Where a ship employed in the coasting trade is required to be marked with the disc indicating the load-line, she shall be so marked before the ship proceeds to sea from any port; and the owner shall also once in every twelve months, immediately before the ship proceeds to sea, transmit or deliver to the Port Manager a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the deck-lines which is above that centre.

(2) The owner, before the ship proceeds to sea after any renewal or alteration of the disc, shall transmit or deliver to the Port Manager notice in writing of that renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(3) If default is made in transmitting or delivering any notice or statement under this section, the owner shall, for each offence, be liable to a fine not exceeding one hundred pounds.

(4) When a ship to which this section applies has been marked with a disc indicating the load-line, she shall be kept so marked until notice is given of an alteration.

Penalty for offences in relation to marking of load-line.

55. (1) If—

(*a*) any owner or master of a British ship, which includes a ship owned in the Colony, fails without reasonable cause to cause his ship to be marked as by this Part of this Ordinance required, or to keep her so marked, or allows the ship to be so loaded as to submerge in salt water the centre of the disc indicating the load-line; or

(*b*) any person conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

.e shall for each offence be liable to a fine not exceeding one hundred pounds.

(2) If any mark required by this Part of this Ordinance is in any respect inaccurate so as to be likely to mislead, the owner of the ship shall for each offence be liable to a fine not exceeding one hundred pounds.

Regulations as to load-line

56. (1) The Governor in Council may appoint the Port Manager or his deputy or any other fit and proper person to survey shipping requiring to be registered in the Colony and to approve and certify on his behalf from time to time the position of any disc indicating the load-line, and any alteration thereof, and may appoint fees to be taken in respect of any such approval or certificate.

(2) The Governor in Council may make Rules—

(*a*) determining the lines or marks to be used in connection with the disc, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that this Part of this Ordinance is to have effect as if any such line were drawn through the centre of the disc;

(*b*) as to the mode in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship, whether by painting, cutting, or otherwise;

(*c*) as to the mode of application for, and form of, certificate under this section; and

(*d*) requiring the entry of those certificates, and other particulars as to the draught of water and freeboard of the ship, in the official log-book of the ship, or other publication thereof on board the ship, and requiring the delivery of copies of those entries.

(3) All such Rules shall, while in force, have effect as if enacted in this Ordinance, and if any person fails without reasonable cause to comply with any such Rule made with respect to the entry, publication, or delivery of copies of certificates or other particulars as to the draught of water and freeboard of a ship, he shall for each offence be liable to a fine not exceeding one hundred pounds.

(4) Where in pursuance of the Rules any such certificate is required to be delivered, a statement in writing as to the disc and deck-lines of a ship need not be inserted in the form of entry or transmitted or delivered to the Port Manager under the provisions hereinbefore contained.

PART IV.

WRECK AND SALVAGE.

Definition of "wreck" and "salvage."

57. In this Part of this Ordinance, unless the context otherwise requires—

(1) the expression "wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water;

(2) the expression "salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services.

Appointment of receiver of wreck.

58. (1) The Port Manager shall have the general superintendence throughout the Colony of all matters relating to wreck, and may, with the consent of the Governor, appoint any administrative officer, or any officer of Customs, or, when it appears to the Port Manager to be more convenient, any other person, to be a receiver of wreck (in this Part of the Ordinance referred to as a " receiver ") in and for any part of the Colony, and to perform the duties of receiver under this Part of this Ordinance.

(2) Notice of every appointment of a receiver shall be published in the Gazette, and the publication of such notice in the Gazette shall be conclusive proof of such appointment.

Duty of receiver where vessel in distress.

59. (1) Where a British or foreign vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Colony or any tidal water within the Colony the receiver for the district in which that place is situate shall, upon being made acquainted with the circumstances, forthwith proceed there, and upon his arrival shall take the command of all persons present, and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel (in this Part of this Ordinance referred to as " ship-wrecked persons ") and of the cargo and apparel of the vessel.

(2) If any person wilfully disobeys the directions of the receiver, he shall for each offence be liable to a fine not exceeding fifty pounds; but the receiver shall not interfere between the master and the crew of the vessel in reference to the management thereof, unless he is requested to do so by the master.

Power of the receiver in case of vessels in distress.

60. (1) The receiver may, with a view to such preservation as aforesaid of shipwrecked persons, or of the vessel, cargo or apparel—

(*a*) require such persons as he thinks necessary to assist him;

(*b*) require the master, or other person having the charge of any vessel near at hand to give such aid with his men or vessel, as may be in his power;

(*c*) demand the use of any motor vehicle, wagon, cart, or horses or other draught animals that may be near at hand.

(2) If any person refuses without reasonable cause to comply with any such requisition or demand, that person shall, for each refusal, be liable to a fine not exceeding one hundred pounds; but a person shall not be liable to pay any duty in respect of any such motor vehicle, wagon, cart or horses, or other draught animals, by reason only of the use of the same under this section.

Power to pass over adjoining lands.

61. (1) Whenever a vessel is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel, or of saving the lives of the shipwrecked persons, or of saving the cargo or apparel of the vessel, unless there is some public road equally convenient, pass or repass, either with or without motor vehicles, carriages or horses or other draught animals, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the vessel.

(2) Any damage sustained by any owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the vessel, cargo or articles in respect of or by which damage is occasioned, and the amount payable in respect of the damage shall, in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is under this Part of this Ordinance determined or recoverable.

(3) If the owner or occupier of any land—

(*a*) impedes or hinders any person in the exercise of the rights given by this section by locking his gates, or refusing, upon request, to open the same, or otherwise; or

(*b*) impedes or hinders the deposit of any cargo or other article recovered from the vessel as aforesaid on the land; or

(*c*) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit,

he shall for each offence be liable to a fine not exceeding one hundred pounds.

Power of receiver to suppress plunder and disorder by force.

62. (1) Whenever a vessel is wrecked, stranded, or in distress as aforesaid, and any person plunders, creates disorder, or obstructs the preservation of the vessel or of the shipwrecked persons or of the cargo or apparel of the vessel, the receiver may cause that person to be apprehended.

(2) The receiver may use force for the suppression of any such plundering, disorder, or obstruction, and may command all His Majesty's subjects to assist him in so using force.

(3) If any person is killed, maimed, or hurt by reason of his resisting the receiver or any person acting under the orders of the receiver in the execution of the duties by this Part of this Ordinance committed to the receiver, neither the receiver nor the person acting under his orders shall be liable to any punishment, or to pay any damages by reason of the person being so killed, maimed, or hurt.

Exercise of powers of receiver in his absence.

63. (1) Where a receiver is not present, the following officers or persons in succession (each in the absence of the other, in the order in which they are named), namely, any administrative officer, officer of customs, police officer, justice of the peace, commissioned officer on full pay in the naval service of His Majesty, or commissioned officer on full pay in the military service of His Majesty, may do anything by this Part of this Ordinance authorised to be done by the receiver.

(2) An officer acting under this section for a receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by this Ordinance, be considered as the agent of the receiver, and shall place the same in the custody of the receiver; but he shall not be entitled to any fees payable to a receiver, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Power of receiver to examine persons with respect to ship in distress.

64. (1) Any receiver, or in his absence, any magistrate or administrative officer or justice of the peace, shall as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any British or foreign ship which may be or may have been in distress at any place on or near the coasts of the

Colony, or any tidal water within the Colony, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to all or any of the following matters, that is to say :—

(*a*) The name and description of the ship;

(*b*) The names of the master and the owners;

(*c*) The names of the owners of the cargo;

(*d*) The ports from and to which the ship was bound;

(*e*) The occasion of the distress of the ship;

(*f*) The services rendered; and

(*g*) Such other matters or circumstances relating to the ship, or to the cargo on board the same, as the receiver, magistrate, administrative officer or justice thinks necessary.

(2) Such receiver, magistrate, administrative officer, or justice shall take such examination in writing, and shall make two copies of the same, one of which he shall send to the Port Manager and the other to the Commissioner of Customs.

(3) For the purposes of any such examination, every receiver, magistrate, administrative officer or justice shall have all the ordinary powers given to a first class magistrate by the Criminal Procedure Code, and to a court of inquiry by Part II of this Ordinance.

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Penalty for taking wreck at time of casualty.

65. (1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Colony or any tidal water within the Colony, any cargo or other articles belonging to or separated from the vessel which may be washed on shore or otherwise lost or taken from the vessel shall be delivered to the receiver.

(2) If any person, whether the owner or not, secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or any person authorised by him to demand the same, that person shall for each offence be liable to a fine not exceeding one hundred pounds.

(3) The receiver or any person authorised as aforesaid may take any such cargo or article by force from the person so refusing to deliver the same.

66. Where any person finds or takes possession of any wreck at any place on or near the coasts of the Colony or any tidal water within the Colony or brings any wreck within the Colony he shall— **Provision as to wreck found in the Colony.**

(*a*) if he is the owner thereof, give notice to the receiver of the district stating that he has found or taken possession of the same, and describing the marks by which the same may be recognised;

(*b*) if he is not the owner thereof, as soon as possible deliver the same to the receiver of the district;

and if any person fails, without reasonable cause, to comply with this section, he shall, for each offence, be liable to a fine not exceeding one hundred pounds, and shall in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value thereof, to be recovered in the same way as a fine of a like amount under this Ordinance.

67. Where a receiver takes possession of any wreck he shall within a reasonable time— **Notice of wreck to be given by receiver.**

(*a*) cause to be posted in the customs house nearest to the place where the wreck was found or was seized by him a description thereof and of any marks by which it is distinguished; and

(*b*) if in his opinion the value of the wreck exceeds twenty pounds, also transmit a similar description to Lloyds' Agents for East Africa who shall post it in some conspicuous position for inspection.

68. (1) The owner of any wreck in the possession of the receiver, upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into possession of the receiver, shall, upon paying the salvage fees, customs charges, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him. **Claims of owners to wreck.**

(2) Where any articles belonging to or forming part of a foreign ship which has been wrecked at any place on or near the coasts of the Colony or any tidal water within the Colony, or belonging to and forming part of any cargo, are found in or near the Colony, or are brought

into any port of the Colony, the consular officer of the country to which the ship or in the case of cargo to which the owners of the cargo may have belonged, or any consular officer of that country authorised in that behalf by any treaty or arrangement with that country, shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the articles.

Immediate sale of wreck by receiver in certain cases.

69. A receiver may at any time sell any wreck in his custody, if in his opinion—

(*a*) it is under the value of five pounds; or

(*b*) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(*c*) it is not of sufficient value to pay for warehousing,

and the proceeds of the sale shall, after defraying the expenses thereof, be paid to the Port Manager who shall hold the same for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

LIABILITY OF WRECK TO DUTY.

Wrecked goods liable to duty.

70. All wreck being foreign goods brought or coming into the Colony shall be subject to the same duties as if such goods were imported into the Colony, and if any question arises as to the origin of the goods, they shall be deemed to be produce of such country as the Commissioner of Customs may on investigation determine.

Commissioner of Customs may permit wrecked goods to be shipped away from Colony.

71. The Commissioner of Customs may permit all goods, wares and merchandise saved from any ship stranded or wrecked at any place on or near the coasts of the Colony, or any tidal water within the Colony and which would be liable to pay customs duties on coming into the Colony, to be shipped to any port outside the Colony without such customs duty having been paid.

Obligation of owner of wrecked goods.

72. (1) If any wreck or wrecked goods liable to duty be taken possession of by the owner in accordance with section 66 of this Ordinance such owner shall as soon as possible file a statement with the Commissioner of Customs showing—

(*a*) the date when he took possession;

(*b*) the marks, numbers, denomination and description of the goods taken into possession;

(*c*) their quantity and description in accordance with the official import list;

(*d*) the value (without any deduction for deterioration) of such goods as are liable to specific duty and *ad valorem* duty respectively;

(*e*) an estimate of the present value of such goods, allowing for deterioration;

(*f*) the place at which such owner has such goods in possession;

(*g*) the place to which such goods were consigned; and

(*h*) the place at which such goods were put in the ship.

The owner shall at the time of filing make a statutory declaration that the statement is correct and that the sums and prices in figures therein contained are the real and *bonâ fide* value at the place from whence the goods have been imported.

(2) Every owner taking possession as aforesaid shall refrain from using, selling, or disposing of the goods aforesaid until the latter have been inspected by or on behalf of the Commissioner of Customs and until he has paid the proper duty thereon, and any such owner who does not comply with the provisions contained in this section shall in addition to his liability to pay the duty be liable to a fine of fifty pounds.

Information to be supplied to the Commissioner of Customs to establish claim to delivery of wreck.

73. No person shall be deemed to have established a claim for delivery of any wreck unless he shall—

(*a*) supply to the Commissioner of Customs such information as the latter may deem necessary in order to ascertain the amount of duty payable in respect of the wreck, delivery of which is claimed; and

(*b*) pay to the Commissioner of Customs the proper duty on such wreck.

Wreck not to be released until payment of duty arranged for.

74. It shall not be lawful for a receiver to release any cargo or wreck unless and until arrangements have been made to the satisfaction of the Commissioner of Customs for the payment of any customs duty that may be due in respect of such goods.

Duty on wrecked goods, how payable.

75. Duty on wreck subject to *ad valorem* duty shall be payable on the gross value of such goods, or, if such goods are sold, on the gross purchase price thereof: Provided that if any goods subject to specific duty realize by reason of their damaged condition a sum which in the opinion of the Com-

missioner of Customs is less than the amount which would otherwise have been paid, it shall be lawful for the Commissioner of Customs in his discretion to reduce the specific duty to an extent which will make the duty deducted be in the same proportion to the whole specific duty as the price realized bears to the sum which the Commissioner of Customs estimates would have been realized if the goods had been undamaged.

Duty on damaged goods, how payable.

76. With respect to the goods of the kinds referred to in sections 72 and 73 of this Ordinance full *ad valorem* duty or specific duty shall be paid unless the goods are in the opinion of the Commissioner of Customs damaged; and in the latter case the Commissioner of Customs may fix the amount to be paid as duty at a sum bearing the same proportion to the whole specific duty or *ad valorem* duty that the value of the injured goods bears to what would be the gross value of the goods if undamaged.

Person to be regarded as importer of wrecked goods.

77. The owner of any wreck or the person acting on his behalf shall for all intents and purposes be taken as the importer thereof and shall be liable for the duty thereon.

UNCLAIMED WRECK.

Right of Crown to unclaimed wreck.

78. His Majesty and His Heirs and Successors are entitled to all unclaimed wreck found in or brought into any part of the Colony.

Proceedings with respect to unclaimed wreck.

79. Subject to the foregoing provisions respecting the liability of wreck to duty, if no owner establishes a claim to wreck found in or brought into any part of the Colony before the expiration of six months from the date at which the same came into the possession of the receiver, the receiver may forthwith sell the same, and shall, after paying all expenses attending such sale and deducting all expenses incurred by him, and paying to the salvors such amount of salvage as the Governor may, in each case or by any general rule, determine, pay the proceeds of such sale into the general revenue of the Colony.

Disputed title to wreck.

80. (1) If any dispute arises between the Port Manager or any receiver and any person as to the validity of such person's claim to wreck found at any place, or, where more persons than one claim title to that wreck and a dispute arises

between them as to that title, that dispute may be referred and determined in the same manner as if it were a dispute as to salvage to be determined summarily under this Part of this Ordinance.

(2) If any party to the dispute is unwilling to have the same so referred and determined, or is dissatisfied with the decision of that determination, he may within three months after the expiration of a year from the time when the wreck has come into the receiver's hands, or from the date of the decision, as the case may be, take proceedings in any Court having jurisdiction in the matter for establishing his title.

Discharge of Port Manager and receiver from liability.

81. Upon the delivery of wreck or the proceeds of wreck by the Port Manager, or by a receiver, to any person in pursuance of the provisions of this Ordinance, the Port Manager or such receiver shall be discharged from all liability in respect thereof; but such delivery shall not prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties.

Emoluments of receiver.

82. It shall be lawful for the Treasurer to pay to a receiver out of the general revenue of the Colony such sum or sums as personal emoluments as the Governor in Council may by rule or otherwise prescribe.

REMOVAL OF WRECK.

Removal of wreck by Port Manager.

83. Where any vessel is sunk, stranded or abandoned in any harbour, fairway, channel or tidal water under the control of the Port Manager or any other officer specifically appointed to have such control, or in or near any approach thereto, in such manner as in the opinion of the person having such control to be, or to be likely to become, an obstruction or danger to navigation or to lifeboats or other craft engaged in lifeboat service in that harbour or water or in any approach thereto, it shall be lawful but not obligatory for the Port Manager or such other officer—

(*a*) to take possession of, and raise, remove, or destroy the whole or any part of the vessel, her equipment, stores, coal, cargo or ballast; and

(*b*) to light or buoy any such vessel or part until the raising, removal, or destruction thereof; and

(*c*) to sell, in such manner as he thinks fit, any vessel, her equipment, stores, coal, cargo, ballast or part so raised or removed, and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale to reimburse himself for the expenses incurred by him in relation thereto under this section, and the Port Manager or such other officer shall hold the surplus, if any, of the proceeds in trust for the persons entitled thereto :

Provided as follows :—

(1) A sale shall not (except in the case of property which is of a perishable nature, or which would deteriorate in value by delay) be made under this section until at least four weeks' notice of the intended sale has been given by advertisement in some local newspaper circulating in or near the district over which the Port Manager or such other officer has control; and

(2) At any time before any property is sold under this section, the owner thereof shall be entitled to have the same delivered to him on payment to the Port Manager or such other officer of the fair market value thereof, to be ascertained by agreement between the Port Manager or such other officer and the owner, or failing agreement, by some person to be named for the purpose by the Governor, and the sum paid to the Port Manager or such other officer as the value of any property under this provision shall, for the purposes of this section, be deemed to be the proceeds of sale of that property; and

(3) If the total proceeds of the sale of such vessel or of her equipment or stores or coal or cargo or ballast are insufficient to pay the costs of their removal (including the payment of salvage claims, if any, arising out of such removal) the excess of such costs over and above the amount realised by any such sale or sales shall be a debt due from the owner of such vessel to His Majesty, and such debt may be recovered in any Court of competent jurisdiction in the Colony.

84. The powers conferred by this Part of this Ordinance on the Port Manager or other officer specially appointed for the removal of wrecks shall be in addition to and not in derogation of any other powers for a like object. **Powers to be cumulative.**

OFFENCES IN RESPECT OF WRECK.

85. (1) If any goods, merchandise, or articles of any kind belonging to any ship in distress, or wrecked, stranded or cast on shore, are found in the possession of any person or on the premises of any person with his knowledge, and such person, being taken or summoned before a magistrate, does not satisfy such magistrate that he came lawfully by the same, then the same shall by order of such magistrate be forthwith delivered over to the receiver of the district to be disposed of according to law. **Wreck found in the possession of or on the premises of any person.**

(2) Every such person shall be guilty of an offence, and being convicted thereof, shall be liable to a penalty not exceeding twenty pounds.

86. Every person who— **Penalty for carrying away part of ship stranded, etc.**

(*a*) wrongfully carries away or removes any part of any ship stranded, or in danger of being stranded, or otherwise in distress, at any place on or near the coasts of the Colony or any tidal water within the Colony, or any part of the cargo or apparel thereof, or any wreck; or

(*b*) endeavours in any way to impede or hinder the saving of such ship, cargo, apparel, or wreck; or

(*c*) secretes any wreck, or obliterates or defaces any mark thereon,

shall be guilty of an offence, and being convicted thereof shall, in addition to any other penalty or punishment to which he may be subject under this or any other law, be liable to a penalty not exceeding fifty pounds, or to imprisonment of either description for any term not exceeding six months.

87. Every person who, not being a receiver or person authorised to take the command where ships are stranded or in distress, or not acting under the orders of such receiver or person but without the master's leave, endeavours to board any such ship, shall for every such offence, on being con- **Penalty for unlawfully boarding ship in distress.**

victed thereof, be liable to a penalty not exceeding fifty pounds; and it shall be lawful for the master of such ship to repel by force any such person so attempting to board the same.

SALVAGE.

Salvage payable for saving life.

88. (1) Where services are rendered wholly or in part within Colonial waters in saving life from any British or foreign vessel, or elsewhere in saving life from any British vessel, there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

(2) Salvage in respect of the preservation of life when payable by the owners of the vessel shall be payable in priority to all other claims for salvage.

(3) Such salvage shall be a first charge on the proceeds of the sale of such vessel or part of the vessel, her equipment, stores, coal, cargo or ballast as may have been saved.

(4) Any salvage money received by a receiver for services rendered by him shall be paid into the general revenue of the Colony, provided that nothing herein contained shall be deemed to preclude a receiver from recovering salvage money in the same manner as any other salvor may recover salvage money due to himself.

alvage of argo or wreck.

89. Where any vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Colony or any tidal water within the Colony, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel or wreck, a reasonable amount of salvage to be determined in case of dispute in manner hereinafter mentioned.

PROCEDURE IN SALVAGE.

Determination of salvage disputes.

90. (1) Disputes as to the amount of salvage whether of life or property, and whether rendered within or without the Colony, arising between the salvor and the owners of

any vessel, cargo, apparel, or wreck, shall, if not settled by agreement, arbitration, or otherwise, be determined summarily in manner provided by this Ordinance, in the following cases, namely :—

(*a*) In any case where the parties to the dispute consent;

(*b*) In any case where the value of the property saved does not exceed one thousand pounds;

(*c*) In any case where the amount claimed does not exceed two hundred pounds.

(2) Subject as aforesaid, disputes as to salvage shall be determined by the Supreme Court, but if the claimant does not recover in such Court more than two hundred pounds he shall not be entitled to recover any costs, charges or expenses incurred by him in the prosecution of his claim, unless the Court certifies that the case is a fit one to be tried otherwise than summarily in manner provided by this Ordinance.

(3) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

(4) Where a dispute as to the salvage is to be determined summarily under this section a suit shall be commenced for the amount claimed in the court of a first class magistrate who shall have jurisdiction to adjudicate in cases in which the value of the property saved does not exceed one thousand pounds or in which the amount claimed does not exceed two hundred pounds, provided that the jurisdiction of the magistrate may with the consent of the parties be extended beyond the limits in this sub-section prescribed.

Determination of disputes as to salvage summarily.

91. (1) Disputes as to salvage which are to be determined summarily in manner provided by this Ordinance shall—

(*a*) where the dispute relates to the salvage of wreck, be referred to a court having jurisdiction at or near the place where the wreck is found:

(*b*) where the dispute relates to salvage in the case of services rendered to any vessel or to the cargo or apparel thereof or in saving life therefrom, be referred to a court having jurisdiction at or near the place where the vessel is lying, or at or near the port in the Colony into which the vessel is first brought after the occurrence by reason whereof the claim of salvage arises.

(2) Any court to whom a dispute as to salvage is referred for summary determination may, for the purpose of determining any such dispute, call in to its assistance any person conversant with maritime affairs as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum not exceeding ten pounds as the Governor may direct.

Appeal in case of salvage dispute.

92. (1) Where a dispute relating to salvage has been determined summarily in manner provided by this Ordinance, any party aggrieved by the decision may appeal therefrom to the Supreme Court, but only if the sum claimed as salvage exceeds fifty pounds and the appellant within ten days after the date of the award or judgment gives notice to the magistrate of his intention to appeal, and, within twenty days after the date of the award or judgment, takes such proceedings as, according to the practice of the Supreme Court, are necessary for the institution of an appeal.

(2) In the case of an appeal from a magistrate the magistrate shall transmit to the Registrar of the Supreme Court a copy on unstamped paper certified under his hand to be a true copy of the proceedings had before him and of his award or judgment, accompanied by his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Supreme Court as evidence in the case.

Valuation of property by receiver.

93. (1) Where any dispute as to salvage arises, the receiver of the district where the property is in respect of which the salvage claim is made may, on the application of either party, appoint a valuer to value that property, and shall give copies of the valuation to both parties.

(2) Any copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the receiver, shall be admissible as evidence in any subsequent proceeding.

(3) There shall be paid in respect of the valuation by the person applying for the same such fee as the Governor may direct.

Detention of property liable for salvage by a receiver.

94. (1) Where salvage is due to any person under this Ordinance, the receiver shall—

(*a*) if the salvage is due in respect of services rendered in assisting any vessel, or in saving life therefrom, or in saving the cargo or apparel thereof, detain the vessel and cargo or apparel; and

(*b*) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under the Ordinance, detain the wreck.

(2) Subject as hereinafter mentioned, the receiver shall detain the vessel and the cargo and apparel, or the wreck (hereinafter referred to as " detained property ") until payment is made for salvage or process is issued for the arrest or detention thereof by some competent court.

(3) A receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds two hundred pounds and any question is raised as to the sufficiency of the security, to the satisfaction of the Supreme Court.

(4) Any security given for salvage in pursuance of this section to an amount exceeding two hundred pounds may be enforced by the Supreme Court in the manner as if bail had been given in that Court.

Sale of detained property by receiver.

95. (1) The receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases, namely :—

(*a*) Where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due; or

(*b*) Where the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within twenty days after the decision of the first court; or

(*c*) Where the amount is disputed and an appeal lies from the decision of the first court to the Supreme Court, and within twenty days of the decision of the first court neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees, and salvage, and, so far as not required for that purpose, shall be paid to the owners of the property, or any other persons entitled to receive the same.

Payment of salvage, to whom to be made in case of dispute as to apportionment.

96. (1) Whenever the aggregate amount of salvage payable in respect of salvage services has been finally ascertained, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due, to apply to the receiver for liberty to pay the amount so ascertained to him and the receiver shall, if he thinks fit, receive the same accordingly and grant a certificate under his hand stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to his or their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned.

(2) The receiver shall with all convenient speed distribute any amount received by him under this section among the persons entitled to the same on such evidence, and in such shares and proportions, as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

(3) A distribution made by the receiver in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Apportionment of salvage by Supreme Court.

97. Whenever the aggregate amount of salvage payable in respect of salvage service rendered in the Colony has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever that amount may be, then, if any delay or dispute arises as to the apportionment thereof, the Supreme Court may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it thinks fit, appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be to distribute the same, or to bring the same into court to be there dealt with as the court may direct, and may for the purposes aforesaid issue such processes as it thinks fit.

98. (1) There shall be paid to every receiver the expenses properly incurred by him in the performance of his duties, and also, in respect of the several matters specified in the Schedule to this Ordinance, such fees not exceeding the amounts therein mentioned as may be directed by the Governor. **Receiver's fees.**

(2) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses or fees, have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him.

(3) Whenever any dispute arises as to the amount payable to any receiver in respect of expenses or fees, that dispute shall be determined by the Governor, and his decision shall be final.

(4) All fees received or recovered by a receiver shall be paid into the general revenue of the Colony but the receiver shall be entitled to be compensated for all loss and expense reasonably incurred by him in the performance of his duties under this Ordinance in addition to such sum as may be payable to him under section 82 of this Ordinance.

JURISDICTION OF SUPREME COURT.

99. Subject to the provisions of this Ordinance the Supreme Court shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed on the high seas or within the Colony, or partly on the high seas and partly within the Colony, and whether the wreck in respect of which salvage is claimed is found on the sea or on the land, or partly on the sea and partly on the land. **Jurisdiction of Supreme Court in salvage.**

PART V.

SEAMEN'S REPATRIATION.

100. Every agreement entered into in the Colony for the employment of any seaman in any ship shall provide, should such agreement terminate out of the Colony for any cause whatsoever otherwise than with the consent of or through the desertion of such seaman, for the return of such seaman to the Colony at the expense of the owner of such ship, and such liability shall be deemed to include the cost of such maintenance, clothing and medical treatment as may be necessary for such seaman until his arrival in the Colony. **Repatriation agreement.**

Repatriation expenses.

101. (1) Where any expenses are incurred by or on behalf of His Majesty on account of the return to the Colony of a seaman engaged under an agreement to which the last preceding section applies such expenses shall be a charge upon the ship (whether British or foreign) on which such seaman was employed, and shall be a debt due to His Majesty from the master of such ship or from the owner thereof for the time being, or, where such ship has been lost, from the owner thereof at the time of such loss, or, where such ship has been transferred to some person other than a British subject, either from the owner thereof for the time being or from the owner thereof at the time of such transfer, and also, if such ship be a foreign ship, from the person, whether principal or agent, who engaged such seaman for employment therein.

(2) In any proceedings for the recovery of such debt as aforesaid, the production of a certificate from the Treasurer of the Colony that such expenses were incurred and paid shall be *primâ facie* evidence in that behalf.

(3) Should such expenses not be recoverable under this or the last preceding section they shall be borne by and debited to the general revenue of the Colony.

Penalty.

102. Any person committing a breach of the provisions of section 100 of this Ordinance shall be liable for each offence, on conviction, to a fine not exceeding fifty pounds.

PART VI.

Miscellaneous Provisions.

Application of penalties.

103. (1) All fines, penalties and forfeitures recovered under this Ordinance, the application of which is not otherwise provided for, shall be paid to the general revenue of the Colony : Provided that the Governor in Council may award such proportion of the proceeds of any fine or penalty as he shall think proper to the informer or other person through whose instrumentality the same has been recovered.

(2) All forfeitures under the provisions of this Ordinance shall be sued for by the Port Manager as a civil debt recoverable summarily.

Penalty when none specified.

104. If any person shall contravene the provisions of this Ordinance, for the contravention of which no specific penalty is provided, he shall be liable to a penalty not exceeding fifty pounds.

105. Save as provided by this Ordinance, this Ordinance shall not apply to ships plying solely on rivers or lakes: Provided that it shall be lawful for the Governor in Council by Proclamation published in the Gazette to apply the whole or any part of this Ordinance with such variations or modifications as may seem to him necessary in the circumstances to ships plying on all or any of the lakes and rivers of the Colony. **Application of Ordinance.**

106. The Merchant Shipping Fees Ordinance (Chapter 56 of the Revised Edition) and sub-section (2) of section 63 of the Employment of Natives Ordinance (Chapter 139 of the Revised Edition) are hereby repealed. **Repeal.** ***Cap. 56.***

SCHEDULE.

MAXIMUM FEES AND REMUNERATION OF RECEIVERS.

	Sh.
For every examination on oath instituted by a receiver with respect to any vessel which may be or may have been in distress, a fee not exceeding	20
But so that in no case shall a larger fee than two pounds be charged for examination taken in respect of the same vessel and the same occurrence, whatever may be the number of the deponents.	
For every report required to be sent by the receiver to Lloyds' Agents for East Africa, the sum of	10
For wreck taken by the receiver into his custody, a percentage of five per centum upon the value thereof.	
But so that in no case shall the whole amount of percentage so payable exceed twenty pounds.	
In cases where any services are rendered by the receiver, in respect of any vessel in distress, not being wreck, or in respect of the cargo or other articles belonging thereto, the following fees instead of a percentage, that is to say,	

If that vessel with her cargo equals or exceeds in value six hundred pounds, the sum of two pounds for the first, and the sum of one pound for every subsequent day during which the receiver is employed on that service, but if that vessel with her cargo is less in value than six hundred pounds, one moiety of the above-mentioned sum.

No. 52 OF 1930.

[24TH DECEMBER, 1930.] Date of assent.

An Ordinance to Amend the Liquor Ordinance.

24th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as "the Liquor (Amendment) Ordinance, 1930," and shall be read as one with the Liquor Ordinance (Chapter 71 of the Revised Edition), hereinafter referred to as "the Principal Ordinance." Short title. *Cap.* 71.

2. No action shall be maintainable to recover any debt alleged to be due in respect of the sale or supply of any intoxicating liquor which was delivered for consumption on the premises where sold or supplied unless the person to whom the same was sold or supplied was at the time of such sale or supply a lodger on such premises.

No. 53 OF 1930.

Date of assent. [24TH DECEMBER, 1930.]

An Ordinance to make Provision for the Payment of a Poll Tax in the Northern Frontier Province.

Date of commencement. *24th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as "the Northern Frontier Province Poll Tax Ordinance, 1930."

Interpretation. **2.** In this Ordinance, unless inconsistent with the context :—

"Tribesman" means any male person who by birth or adoption belongs to any tribes which may be proclaimed under the provisions of section 3 of this Ordinance;

"Collector" includes a District Commissioner or District Officer and any person appointed by the Governor to assist in the collection of taxes leviable under this Ordinance;

"Annually" in reference to the period for which the poll tax prescribed by this Ordinance is payable, means each period from the 1st day of January to the 31st day of December following.

Proclaimed tribes for poll tax. **3.** The Governor may by proclamation order that the poll tax prescribed by section 4 of this Ordinance shall be paid by the tribesmen of any tribe or section of a tribe (hereinafter referred to as "a proclaimed tribe") which is ordinarily resident in the Northern Frontier Province.

Poll tax. **4.** Every tribesman of the apparent age of sixteen years or over who is residing with his tribe shall pay annually to a collector a tax (hereinafter referred to as "the poll tax") of such amount not exceeding twenty shillings as the Governor may by proclamation direct.

Tax to be paid in coin or notes current in the Colony. **5.** (1) The poll tax shall be payable in coin or notes current in the Colony.

Receipt. (2) A receipt for the amount of poll tax paid shall be delivered by the collector to the person paying the same.

Poll tax, when payable.

6. The poll tax leviable under this Ordinance shall be payable on the first day of January in each year, and shall be recoverable at any time on conviction before a magistrate by distress, and in default of distress, the court may order imprisonment for any period not exceeding three months.

Court costs.

7. Whenever proceedings are taken for the recovery of any poll tax under this Ordinance, it shall be lawful for the magistrate to order the person in default to pay such sum for court costs not exceeding in any case six shillings as the magistrate in his discretion may determine. The sum so ordered to be paid in costs, together with the amount of poll tax unpaid, shall be recoverable by distress, and in default of distress the court may order imprisonment for any period not exceeding three months.

Power to remit tax in certain cases.

8. Whenever it shall be shown to the satisfaction of a collector that any person liable to pay the poll tax leviable under this Ordinance is without sufficient means to pay the whole amount of such tax, and is unable to obtain employment by reason of age or infirmity or any other good reason, such collector may, subject as hereinafter provided, allow the remission of the whole or a portion of such tax, as the case may require, provided that in such case the collector shall give to such person a certificate in such form as may be prescribed, which certificate shall relieve the person in respect of whom the same shall have been given from liability to pay the poll tax leviable under this Ordinance for the period mentioned in such certificate : Provided that such exemption certificate may be cancelled by or under the direction of a District Commissioner or District Officer.

Agreement with proclaimed tribe to commute tax.

9. The Governor may enter into an agreement with the representatives of a proclaimed tribe whereby such tribe shall pay annually a commuted amount in lieu of the poll tax payable by the tribesmen of such tribe, such amount in no case to be greater than the total of the poll taxes estimated to be payable by the tribesmen of such tribe.

Liability for double tax.

10. (1) When an agreement has been entered into by the Governor with the representatives of a proclaimed tribe under section 9 and the commuted amount payable under such agreement is not paid within three months from the date on which demand for such amount is made to the tribe through the administrative officer in charge of the area such tribe shall be liable to pay double the amount in respect of which default has been made and in lieu thereof.

(2) The amount of any tax due under this section shall be recoverable on the conviction of the respresentatives of such proclaimed tribe before a magistrate by distress on the property of each and every tribesman of such proclaimed tribe.

Governor may fix a lump sum payable by a proclaimed tribe in certain cases

11. (1) It shall be lawful for the Governor if he is satisfied that the collection of poll tax from the tribesmen of any proclaimed tribe cannot otherwise be effected, to fix a lump sum to be paid by such tribe, which sum shall in no case be greater than the total of the poll taxes estimated to be payable by the tribesmen of such tribe.

(2) When the Governor has fixed a lump sum under the preceding sub-section such fact shall be communicated to the tribe concerned through the administrative officer in charge of the area, and if such tribe fails to pay such sum within three months from the date of such communication such tribe shall be liable to pay double the amount in respect of which default has been made and in lieu thereof.

(3) The amount of any tax due under this section shall be recoverable in manner provided by sub-section (2) of section 10 of this Ordinance.

(4) No appeal shall lie from the Governor's order fixing a lump sum under this section, which shall be final and shall not be liable to be contested by suit or otherwise.

Power to Governor to exempt persons from payment of tax.

12. The Governor may by writing under his hand exempt any person or class of persons or the members of any tribe from payment of the whole or any portion of any tax leviable under this Ordinance.

Collector may enter land in execution of duty.

13. (1) A collector may enter upon any land or into any building in the execution of his duties under this Ordinance.

(2) Any person preventing or obstructing the entry of any collector or otherwise obstructing a collector in the lawful exercise of his duties under this Ordinance shall be guilty of an offence and shall be liable on conviction before a magistrate to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Provision for remission of poll tax in certain events.

14. In the event of any person within the description of any of the classes of persons set out in the Schedule hereto, owing to injuries received, whether prior or subsequent to the date of this Ordinance on active service against an enemy or otherwise on active service or owing to a disease contracted on

such active service or as a result thereof, becoming totally or partially disabled to such an extent as materially to affect his wage-earning capacity, the commanding officer of such person at the time of such injuries or disease being received, contracted or resulting as aforesaid, or such officer as the Governor may appoint on that behalf may recommend and the Governor may sanction the exemption of such person from the payment of poll tax in respect of himself for life.

Rules.

15. The Governor in Council may make Rules for all or any of the purposes following :—

(*a*) Prescribing the forms of any receipt or certificate to be given under this Ordinance.

(*b*) Prescribing the mode and time of collection of any tax levied under the provisions of this Ordinance.

(*c*) Defining the duties of collectors.

(*d*) Defining the duties and responsibilities of headmen in assisting in the collection of the said tax.

(*e*) Generally for the better carrying out of the provisions of this Ordinance.

Persons paying tax under this Ordinance exempted from payment of Hut or Poll Tax. *Cap.* 51. *Cap.* 52.

16. Any tribesman who has paid poll tax prescribed by this Ordinance shall be exempt from payment of any of the taxes under the Native Hut and Poll Tax Ordinance and Non-Native Poll Tax Ordinance, and any tribesman who has paid the tax prescribed under the Non-Native Poll Tax Ordinance shall be exempt from payment of the poll tax prescribed by this Ordinance.

Expiry of Ordinance

17. This Ordinance shall be in force until the 31st day of December, 1933, and shall then expire, unless by resolution of the Legislative Council it is continued in force until a later date.

SCHEDULE.

Any native officer, non-commissioned officer or private of the King's African Rifles, or any native carrier, or any combatant or non-combatant native, recruited or selected under any Ordinance for the time being in force or otherwise for any form of military service.

No 54 OF 1930.

Date of assent. [24TH DECEMBER, 1930.]

An Ordinance to Consolidate and Amend the Law Relating to Collective Punishment.

Date of commencement. *24th December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Collective Punishment Ordinance, 1930."

Fines on villagers, etc., accessory to crimes. **2.** The Governor may impose fines on all or any inhabitants of any village, area or district or members of any tribe, sub-tribe or community, if, after inquiry, he is satisfied—

(*a*) that they or any of them have colluded with any criminal, or harboured, or rescued, or attempted to rescue, or failed to take all reasonable means to prevent the escape of, any criminal or any person accused of having committed a crime concerning whom a public announcement had previously been made within the limits of their village, area or district by an authorized emissary of a district officer or of a native authority;

(*b*) that they or any of them have suppressed, or combined to suppress, evidence in any criminal case, investigation, or inquiry, or in any inquest;

(*c*) that stolen property, or property which might reasonably be suspected of being the proceeds, or part of the proceeds, of a theft concerning which a public announcement had previously been made in the manner specified in paragraph (*a*), having been traced to within the limits of their village, area or district, they have failed or neglected to restore the property or to take on the track beyond the limits of such village, area or district,

and may order the whole or any part of the fines recovered under the provisions of paragraphs (*a*), (*b*) and (*c*) to be applied in compensation for the injury caused by the offence

of which the criminal is accused or to which the criminal case, investigation, inquiry, or inquest relates, or in compensation to the owner of the stolen property.

Fines on villages, etc., where offence against the person is committed or attempted.

3. When within any village, area or district a person is dangerously or fatally wounded by unlawful attack, or the body is found of a person believed to have been unlawfully killed, or any serious offence has been committed against any person, the inhabitants of such village, area or district or the members of any tribe, sub-tribe, or community resident therein, shall be deemed to have committed an offence under the last foregoing section and may in like manner be fined by the Governor, unless they can show that they—

(*a*) had not an opportunity of preventing the offence or arresting the offender; or

(*b*) have used all reasonable means to bring the offender to justice.

Power to return whole or part of fine after period of good behaviour.

4. The Governor may, either by the order imposing the fine or by a subsequent order, direct that the whole or any part of the fine recovered under the provisions of this Ordinance shall be repaid to the persons paying such fine provided that they shall have kept the peace and been of good behaviour for such period as the Governor may determine; and any such order may be subsequently varied by a further order of the Governor curtailing or extending such period.

Power to order delivery up of arms.

5. In addition to or in lieu of a fine the Governor may order all or any inhabitants of any village, area or district or members of any tribe or community who have been guilty of an offence against any of the provisions of any of the foregoing sections to deliver up such number of arms as may be ordered to such officer as may be specified.

For the purposes of this section—

" arms " includes arms of precision and any weapon discharging a projectile by explosion, and any part of such weapon, and also swords, cutlasses, spears, daggers, bows and arrows; and

" arms of precision " includes magazine guns, rifles, breech loaders, cap-guns, flint-locks with rifled barrels, revolvers, pistols, air guns and air pistols, or any part or parts thereof.

Governor may determine limits of a village, etc., or define tribe or community for the purpose of any order made under the Ordinance.

6. The Governor may, in making any order under this Ordinance, determine the limits of any village, area or district, or define a tribe, sub-tribe, or community for the purpose of such order.

Recovery of fine.

7. A fine imposed under this Ordinance may be recovered by distress.

Inquiry.

8. An inquiry under this Ordinance shall be conducted by a magistrate or other judicial officer, in the same manner, as far as may be, as an inquiry under the law relating to criminal procedure.

Finality of orders.

9. An appeal shall not lie from any order made under this Ordinance, which shall be final and shall not be liable to be contested by suit or otherwise.

Governor to report to Secretary of State.

10. The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance and the grounds thereof, and the proceedings thereunder.

Repeal of *Cap.* 77.

11. The Collective Punishment Ordinance (Chapter 77 of the Revised Edition) is hereby repealed.

No 55 OF 1930.

[24TH DECEMBER, 1930.] **Date of assent.**

An Ordinance to Prevent Certain Fraudulent Transfers of Businesses.

24th December, 1930.

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Fraudulent Transfer of Businesses Ordinance, 1930." Short title.

2. In this Ordinance— Interpretation.

" business " means any trade or occupation, other than a profession, carried on with a view to profit;

" transferor " and " transferee " respectively include a sub-transferor and sub-transferee, and, where the notice referred to in section 3 is given before the date of the transfer, an intended transferor and an intended transferee.

3. (1) Whenever any business or any portion of any business is transferred, with or without the good will or any portion thereof, the transferee shall, notwithstanding any agreement to the contrary, become liable for all the liabilities incurred in the business by the transferor, unless due notice in accordance with this section shall have been given and shall have become complete at the date of the transfer. Transferee of business to be liable for liabilities of transferor in certain cases.

(2) The liability of the transferee under sub-section (1) of this section shall cease immediately notice given in accordance with this section shall have become complete :

Provided nevertheless that should proceedings be instituted against the transferee before such liability has ceased the said notice shall (for the purposes of such proceedings but for such purposes only) be deemed incomplete pending the final determination of such proceedings including all possible appeals, and pending the expiration of all periods during which such appeals may be brought.

(3) The notice referred to shall contain the particulars hereinafter specified, and shall be given by publication, either before or after the date of the transfer, in the Gazette and in

such newspaper or newspapers circulating in the Colony as may from time to time be prescribed by the Registrar General, and shall, subject to the proviso to sub-section (2) of this section be deemed to be complete upon the expiration of two months from the publication of the notice in the manner aforesaid.

The particulars above referred to are as follows :—

(*a*) The name and address of the transferor;

(*b*) the nature of the business, and the name or style under which, and the address at which the transferor has carried on the business;

(*c*) the name and address of the transferee;

(*d*) the address where the transferee intends to carry on the business; and

(*e*) a statement as to whether the transferee is assuming or is intended to assume all the liabilities incurred in the business by the transferor.

(4) The production of the Gazette containing the notice shall be prima facie evidence as against both the transferor and the transferee of the statements contained in the notice.

(5) Nothing in this section contained shall have the effect of relieving the transferor from any liability to which he would otherwise be subject.

Registrar General may prescribe newspapers

4. The Registrar General may by notice in the Gazette prescribe the newspaper or newspapers in which notice of transfer shall be given under section 3 of this Ordinance, either in respect of the whole Colony or in respect of businesses carried on in any part of the Colony.

Saving.

5. Nothing in this Ordinance contained shall be deemed to apply to the transfer of any business consequent upon the reconstruction or winding up of a company in accordance with the provisions of the Companies Ordinance.

Cap. 93.

No. 56 OF 1930.

[24TH DECEMBER, 1930.] Date of assent.

An Ordinance to make Provision for the Licensing and Control of the Businesses of Brokers, Money-changers and Goldsmiths and Silversmiths.

24th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as "the Brokers Ordinance, 1930." Short title.

2. From and after the date of this Ordinance no person shall carry on the trade of a broker, money-changer, goldsmith or silversmith in the Colony save as hereinafter provided. Trades to which applied.

3. Any person desirous of carrying on any of the trades mentioned in section 2 shall first obtain a licence from the district commissioner of the district in which he intends to trade, and shall pay the fees specified in the annexed Schedule. Licence required.

4. The licensing authority may refuse to grant a licence without assigning any reason, but shall record reasons for the information of the Governor. Power to refuse licence.

5. Every licence granted under this Ordinance shall expire on the thirty-first day of December next following its issue. Expiration of licence.

6. Brokers will be of two classes: "official" and "ordinary." Any person desirous of becoming an official broker must find two sureties approved by the Provincial Commissioner, or such person as he may appoint, who will enter into a bond to the extent of one hundred pounds each for his good behaviour. Official brokers.

7. Except for special reasons, the courts and Government officials shall employ official brokers in preference to ordinary brokers. Employment of official brokers.

Licensee to keep exhibited his name and trade.

8. Every money-changer, goldsmith or silversmith licensed under this Ordinance shall always keep exhibited in English characters not less than three inches long over the outer door of his shop or place of business, his name and trade.

Books of account to be kept by licensees.

9. (1) Every money-changer, goldsmith or silversmith licensed under this Ordinance shall keep in English, Kiswahili, Gujerati or Urdu such books of account as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, accounts of all goods sold and purchased with the dates of the sales and purchases and showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified: Provided that any money-changer, goldsmith or silversmith who has not been licensed under this Ordinance prior to the 1st day of January, 1931, shall keep the books of account prescribed by this sub-section in English and in no other language.

(2) The books of account required by sub-section (1) to be kept by a licensee shall be produced by him for examination at any time to any person authorised in writing by a magistrate or to any police officer not below the rank of assistant superintendent or to any police officer holding a written authority from such senior police officer authorising him to act under this section.

Authority to search licensed premises.

10. Any police officer not below the rank of assistant superintendent or any officer authorised by him in writing or any person authorised in writing by a magistrate may at any time enter the shop or place of business of any money-changer, goldsmith or silversmith licensed under this Ordinance and may search for and examine the books of account required by section 9 to be kept, and may take extracts and copies therefrom, and may search the shop or place of business of such licensee for any articles that he may have reason to suspect to have been dishonestly obtained or dishonestly placed therein.

Business to be transacted at specified places only.

11. Every licence granted to a goldsmith or a silversmith shall specify the place or places at which the trade may be carried on, and the licensee shall not carry on such trade elsewhere than that specified in the licence, without the permission of the licensing authority.

Business hours.

12. All goldsmiths and silversmiths licensed under this Ordinance shall close their shops or places of business to the public between the hours of eight o'clock in the evening and seven o'clock in the morning.

No article to be altered or dealt with for seven days.

13. No person carrying on the trade of goldsmith or silversmith shall sell or dispose of, or in any way alter the shape, condition or nature of any article offered to him for purchase, sale, exchange or otherwise, within seven days after he shall have received the actual possession of such article.

Deposit.

14. Every person carrying on either of the aforementioned trades shall during the seven days aforesaid, deposit and keep any article or articles offered to him for purchase, sale, exchange, or otherwise, at such place or places only as may be described on his licence.

Police to be notified of suspected stolen property.

15. Every licensee under this Ordinance shall bring to the notice of the police any case in which he has reason to believe that any article offered to him is stolen property.

Penalties.

16. Any person who contravenes any provision of this Ordinance or obstructs or hinders any officer acting in the lawful exercise of any power or performance of any duty conferred upon him, shall be guilty of an offence and shall be liable, on conviction by a magistrate, for every such offence, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three months, or to both, and to the forfeiture of his licence.

Repeal.

Cap. 104

17. The Brokers Ordinance (Chapter 104 of the Revised Edition) is hereby repealed.

SCHEDULE.

The fees leviable in respect of licences under this Ordinance shall be as follows :—

	£	sh.
Licence for Ordinary Broker ...	2	0
,, ,, Official Broker ...	2	0
,, ,, Money-changer ...	0	10
,, ,, Goldsmith or Silversmith ...	1	10

Provided that in the case of licences issued after the thirtieth day of June in any year, half the above-mentioned fees shall be payable.

No. 57 OF 1930.

Date of assent. [24TH DECEMBER, 1930.]

An Ordinance to Amend the Dangerous Petroleum Tax Ordinance.

Date of commencement. *By Proclamation.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title and commencement.

Cap. 54.

1. This Ordinance may be cited as " the Dangerous Petroleum Tax (Amendment) Ordinance, 1930," and shall be read as one with the Dangerous Petroleum Tax Ordinance (Chapter 54 of the Revised Edition), hereinafter referred to as " the Principal Ordinance " and shall come into operation on such date as the Governor may, by proclamation in the Gazette, appoint.

Repayment of tax to Imperial Airways, Ltd., in certain cases.

2. The amount of tax paid under the Principal Ordinance by the Imperial Airways Limited in respect of dangerous petroleum which is used for fueling aircraft engaged on the air service between Alexandria and Cape Town shall be payable to the said Imperial Airways Limited on proof by them to the satisfaction of the Treasurer that the dangerous petroleum in respect of which such repayment of tax is claimed has been used by them solely in respect of portions of the said service which lie outside the boundaries of the Colony.

No. 58 OF 1980.

[24TH DECEMBER, 1930.] Date of assent.

An Ordinance to make Provision for the Repayment of Duty paid on Kerosene Oil used solely for Agricultural Purposes.

By Proclamation. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Kerosene Oil (Repayment of Duty) Ordinance, 1930," and shall come into operation on such date as the Governor may by proclamation in the Gazette appoint. Short title and commencement.

2. Any person using imported kerosene oil solely for the purpose of supplying motive power to farm tractors actually employed in agriculture shall be entitled, in accordance with the provisions of this Ordinance, to repayment of an amount equal to the duty paid in respect of such oil under the Customs Tariff Ordinance, 1930. Repayment in respect of kerosene oil used for agricultural purposes. No. 1 of 1930.

3. (1) A claim for obtaining repayment under section 2 of this Ordinance shall be made four times annually in respect of imported kerosene oil used in the three months ending 31st March, 30th June, 30th September, and 31st December respectively. Time and procedure for obtaining repayment.

(2) For the purpose of making such claim the user of imported kerosene oil shall make and subscribe a statutory declaration in the form in the schedule hereto before a magistrate, a justice of the peace or a commissioner for oaths.

(3) Such claim shall thereupon be sent by the user to the Treasurer not later than one month after the expiry of the three months in respect of which the claim is made, and the Treasurer shall pay to the user, out of such funds as may be provided by the Legislative Council for that purpose, such sum as may be due under the provisions of this Ordinance.

4. No stamp duty shall be chargeable upon a statutory declaration made under the provisions of this Ordinance. Stamp duty.

5. The Kerosene Oil (Repayment of Duty) Ordinance, 1928, as amended by the Kerosene Oil (Repayment of Duty) (Amendment) Ordinance, 1929, is hereby repealed. Repeal. No. 1 of 1928. No. 26 of 1929.

SCHEDULE.

STATUTORY DECLARATION.

I, ... of .....
do solemnly and sincerely declare that during the three months ending* ..... I have owned and/or used the undermentioned farm tractor(s) namely—

Make.	*Engine No.*
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

and that during the said period of three months I have used†.....gallons of imported kerosene oil which was purchased by me, as shown on the attached invoices, solely for the purpose of supplying motive power to the above-mentioned farm tractor(s) while such tractor(s) were actually employed by me in agriculture and that no portion of the above-mentioned †.....gallons of imported kerosene oil was used for any other purpose.

AND I do further solemnly and sincerely declare that I have not made any previous claim in respect of any portion of the said quantity of †.....gallons of imported kerosene oil.

AND I make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Ordinance, 1926.

.....
Signature of Declarant.

Made before me this.....day of.....
at.....

.....
Magistrate, Justice of the Peace or Commissioner for Oaths.

*Insert 31st March, 30th June, 30th September or 31st December as the case may be.
†In words.

No. 59 OF 1930

[24TH DECEMBER, 1930.] Date of assent.

An Ordinance to Regulate Dredging and the Use of Steam Vessels on Lakes and Rivers.

24th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Lakes and Rivers Ordinance, 1930." Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

" dredging " means the removal from the bed or banks of any river or lake by any mechanical appliance (other than hand tools) of any mud, ooze, gravel, rock, stone, soil, clay, mineral, precious stones, or any admixture of these materials;

" lake " means a lake specified in the First Schedule to this Ordinance, or added thereto in the manner hereinafter provided;

" river " means a river specified in the Second Schedule to this Ordinance, or added thereto in the manner hereinafter provided;

" steam vessel " includes every description of vessel so constructed as to be propelled otherwise than by sails, oars, paddles or poles.

3. It shall be lawful for the Governor to add to the lakes or rivers specified in the First and Second Schedule respectively the name of any other lake or river : Lakes or rivers may be added to First and Second Schedules.

Provided that no such addition shall be deemed to be part of either of the said Schedules until the expiration of two months from the publication thereof in the Gazette.

4. It shall be lawful for the Governor to define the extent of any lake or river to which this Ordinance shall apply. Any part of a lake or river outside the portion so defined shall not be deemed to be a lake or river for the purposes of this Ordinance. Extent of lake or river may be defined.

DREDGING.

Dredging in lake or river to be licensed

5. It shall not be lawful to dredge in any lake or river without a licence from the Governor, which shall be in the form in the Third Schedule to this Ordinance. Any person dredging in a lake or river without a licence or contrary to the terms on the face of his licence shall be guilty of an offence, and shall be liable to a penalty not exceeding seventy-five pounds for every day during which the offence continues.

Security may be required.

6. Before any licence to dredge is granted security shall be given in such terms and to such amount as the Governor may in each particular case direct.

Regulation on dredging licence.

7. On every licence to dredge the regulations set forth in the Fifth Schedule to this Ordinance shall be endorsed :

Provided that the Governor may in his discretion require such further regulations to be endorsed in any particular case as he may think fit.

Contravening dredging regulations.

8. Any person who shall act in contravention of any of the regulations endorsed upon the licence under which he dredges shall be guilty of an offence, and shall be liable to a penalty not exceeding one hundred and fifty pounds, and the holder of the licence shall be liable for any damage which may have arisen in consequence of such contravention. In this and the following section non-compliance with any lawful order, direction or notice given under the regulations endorsed upon a licence shall be deemed a contravention of such regulations.

Contravention of dredging licence may entail cancellation.

9. Where in any prosecution under this Ordinance it is proved that the terms on the face of or the regulations endorsed on a dredging licence have been contravened, it shall be lawful for the court, subject to the approval of the Governor, to cancel such licence in addition to imposing any penalty prescribed in this Ordinance.

STEAM VESSELS.

Steam vessels on lakes or rivers to be licensed.

10. (1) The master of every steam vessel on a lake or river shall take out a licence for such vessel.

(2) Licences shall be in the form in the Fourth Schedule to this Ordinance, and shall be granted by such officer as the Governor may appoint. Every such licence shall commence on the day on which it is granted and shall terminate on the thirty-first day of December following.

(3) The master of any steam vessel who navigates such vessel, or permits it to be navigated on any lake or river without having a licence for such vessel under this section shall be guilty of an offence, and shall be liable to a penalty not exceeding ten pounds.

(4) In this section " master " includes the owner and the agent for the owner.

Rules.

11. The Governor in Council may make rules—

(*a*) for regulating the use of steam vessels on any lake or river;

(*b*) for prohibiting the use on any lake or river of steam vessels or of any particular description of steam vessel;

(*c*) for regulating the use of any lake or river for the transport of floating timber;

(*d*) for regulating the traffic on any lake or river;

(*e*) for protecting the bird or animal life on or in any lake or river;

(*f*) for protecting and improving the navigability of any river; and

(*g*) generally for the better carrying out of the purposes of this Ordinance.

Fees.

12. For every licence taken out under this Ordinance there shall be payable the fee prescribed therefor in the Sixth Schedule hereto.

Repeal of *Cap.* 116.

13. The Rivers Ordinance (Chapter 116 of the Revised Edition of the Laws) is hereby repealed.

FIRST SCHEDULE.

Lakes to which this Ordinance applies :—

Lake Naivasha.

SECOND SCHEDULE.

Rivers to which this Ordinance applies :—

The Ozi.

The Tana.

THIRD SCHEDULE.

The Lakes and Rivers Ordinance, 1930.

LICENCE TO DREDGE.

(1) State lake or river.
(2) State limits within which licence applies.

Licence is hereby granted to.....to dredge in the (1).....lake/river..... within the following limits, that is to say : (2)..... .....

This licence does not empower the licensees to dredge for minerals or precious stones.

This licence is in force for one year from the date hereof.

Dated at.....this.....day of.....19...

.....
Governor.

FOURTH SCHEDULE.

THE LAKES AND RIVERS ORDINANCE, 1930.

Steam Vessel Licence.

(1) Name of steam vessel.
(2) Launch or tug or yacht as the case may be.

The (1)..... (2)..... owned by .....of..... is hereby licensed for the.....lake/river.

This licence expires on the 31st day of December, 19.....

.....
Governor.

FIFTH SCHEDULE.

REGULATIONS.

To be endorsed on Dredging Licences.

1. In these regulations " inspector " shall mean some officer appointed by the Governor to inspect dredging.

2. The licensee shall give due notice to the inspector stating when he wishes to commence dredging and at what part of the lake or river.

No dredging or operations connected therewith shall be commenced until the consent of the inspector is given in writing.

The licensee shall give every facility to the inspector to examine such plans and documents relating to the dredging or operations connected therewith and to make copies of the same and to take such soundings and measurements as he may think fit.

3. The licensee shall not move his dredging operations from one part of the lake or river to another without the consent of the inspector in writing; he shall, as far as possible, conduct operations continuously along and across the bed of the lake or river from the starting-point to the limits to which his licence applies so as not to form isolated holes or deep places.

4. The licensee shall arrange his dredges, barges, boats, posts, chains, anchors and all other apparatus appertaining thereto, so that they in no way obstruct or interfere with the navigation of the lake or river.

5. The dredgers shall be constructed and shall have such additional apparatus that the tailings therefrom shall not be deposited in such a manner as to form groins or shoals in the bed of the lake or river.

6. If in the opinion of the inspector the dredging or any operations connected therewith have caused any groin, shoal, deposit or other obstruction to be formed either at or near the site of such operations or in any other part of the lake or river which causes or tends to cause erosion or other danger to the stability of the bed of the lake or river, or to the navigation, such groin, shoal, deposit or other obstruction shall be removed immediately upon the receipt of a written notice from the inspector.

7. If in the opinion of the inspector the dredging or any other operations connected therewith have caused, or tend to cause erosion or other damage or danger to the bed or banks of the lake or river or to the navigation, the licensee shall construct and fix such temporary timber groins, sheet piling, fascones or other works to the satisfaction of the inspector as may be necessary to remedy or prevent such damage, and, if necessary, dredging operations shall be suspended until such works are completed and proved satisfactory. Such works shall be carried out, moved and removed immediately upon the receipt of a written notice from the inspector.

8. If the river in which the dredging operations are being carried on be a tributary of another river, and in the opinion of the inspector the carrying on of such operations has caused silt, mud, or other material to be washed down the tributary stream into the main river and has there caused shoals or other obstructions to navigation to be formed, or damage, or danger to the bed or banks of the river, the licensee shall be held

responsible and regulations 6 and 7 shall apply to such main river as if it was the river in which the licensee was carrying on dredging operations.

9. The licensee shall be liable for and shall indemnify the Government and every officer thereof against all accidents, injuries, damages, trespass and losses caused or arising either directly or indirectly by reason of or in connexion with the dredging operations or works pertaining thereto.

10. In case, and so often as any question, difference or dispute shall arise as to the true intent and meaning of these regulations or any part thereof every such question, difference or dispute shall be referred to the sole arbitration and award of the Governor and his decision shall be binding and final.

SIXTH SCHEDULE.

For Dredging Licence	Sh. 30.
For Steam Vessel Licence	Sh. 30

No. 60 OF 1930.

[24TH DECEMBER, 1930.] Date of assent.

An Ordinance to Amend the Land Surveyors Ordinance.

24th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " The Land Surveyors (Amendment) Ordinance, 1930," and shall be read as one with the Land Surveyors Ordinance (Chapter 147 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title. *Cap.* 147.

2. Section 8 of the Principal Ordinance is hereby repealed and the following section substituted therefor :— Repeal and replacement of section 8 of the Principal Ordinance.

" 8. No person unless duly registered as a land surveyor shall— Unqualified persons forbidden to survey.

(*a*) survey any land for the purpose of preparing any plan for attachment to any instrument of conveyance, lease, assignment or transfer requiring to be registered under any registration of lands or titles ordinance for the time being in force;

(*b*) perform any survey affecting the delimitation of the boundaries or the location of beacons of any land registered or to be registered under any registration of land or titles ordinance for the time being in force.

Any person who contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months."

3. Section 9 of the Principal Ordinance is hereby amended by deleting the words " Except as hereinafter provided " at the beginning of the section. Amendment of section 9 of the Principal Ordinance.

Repeal and replacement of section 10 of the Principal Ordinance.

Exemptions from examination.

4. Section 10 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

" 10. Any person who—

(*a*) has graduated from any university recognised by the board and shall have taken a degree in civil engineering ; or

(*b*) is a corporate member of the Institute of Civil Engineers,

shall be exempt from all subjects, examination on which in the opinion of the board may be necessary, provided that such person produces an affidavit in Form D of the Schedule to this Ordinance."

Amendment of **Form D** in the Schedule to the Principal Ordinance.

5. Form D in the Schedule to the Principal Ordinance is hereby amended by inserting the word " Civil " before the word " Engineering " and by substituting the word " Institute " for the word "Institution."

No. 61 OF 1930.

[29TH DECEMBER, 1930.] Date of assent.

An Ordinance to Amend the Diseases of Animals Ordinance.

29th December, 1930. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Diseases of Animals (Amendment) Ordinance, 1930," and shall be read as one with the Diseases of Animals Ordinance (Chapter 157 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title. *Cap.* 157.

2. Sub-section (1) of section 3 of the Principal Ordinance is hereby amended by the addition thereto of the following paragraph :— Amendment of section 3 (1) of the Principal Ordinance.

" For the purposes of this sub-section any animal lawfully taken on a farm by virtue of a contract under the Resident Native Labourers Ordinance, 1925, shall be deemed to be in the possession or charge of the occupier thereof : Provided that where the animal affected with disease or suspected of being affected with disease was so lawfully taken on a farm it shall be the duty of the native so lawfully taking such animal on a farm or his agent forthwith to give notice to the occupier of such farm of the fact of the animal being so affected or suspected of being so affected." No. 5 of 1925.

No. 62 OF 1930.

Date of assent. [31ST DECEMBER, 1930.]

An Ordinance to Amend the Traffic Ordinance, 1928.

Date of commencement. *31st December, 1930.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. **1.** This Ordinance may be cited as " the Traffic (Amendment) Ordinance, 1930 ", and shall be read as one with the No. 26 of 1928. Traffic Ordinance, 1928, hereinafter referred to as " the Principal Ordinance."

Amendment of section 13 of the Principal Ordinance. **2.** Sub-section (*a*) of section 13 of the Principal Ordinance is hereby amended by the deletion of the words " have two independent brakes " and by the substitution therefor of the words " be equipped with two entirely independent and efficient braking systems or with one efficient braking system having two independent means of operation, and maintained ".

Amendment of section 19 of the Principal Ordinance. **3.** Section 19 of the Principal Ordinance is hereby amended by the insertion therein of the words " or other public service vehicle " after the word " omnibus ".

Amendment of section 22 of the Principal Ordinance. **4.** Section 22 of the Principal Ordinance is hereby amended by the addition thereto of the following words :—

" No public service vehicle not being a motor omnibus or taxicab shall convey passengers if such public service vehicle is unsuitable or unsafe for the conveyance of passengers."

Amendment of section 24 of the Principal Ordinance. **5.** Section 24 of the Principal Ordinance is hereby amended by the deletion of the words " public service vehicle " and the substitution therefor of the words " motor omnibus or taxicab ".

Amendment of section 28 of the Principal Ordinance. **6.** Section 28 of the Principal Ordinance is hereby amended by the insertion therein of the words " weight of baggage or goods, if any, or both," after the word " persons " ; and by the insertion therein of the words " or other public service vehicle " after the word " omnibus " wherever that word occurs therein.

7. Section 29 of the Principal Ordinance is hereby amended as follows :— **Amendment of section 29 of the Principal Ordinance.**

(*a*) by the insertion in paragraphs (*a*), (*b*) and (*c*) of the words " or accept passengers for hire or reward " after the words " to ply for hire ";

(*b*) by the insertion in paragraph (*f*) of the words " or other public service vehicle " after the word " taxicab ", and the words " or a gross weight including passengers, baggage and goods " after the word " number ".

8. The Principal Ordinance is hereby amended by the insertion of the following sections after section 28 :— **Additional provisions.**

" 28A. No public service vehicle, not being a motor omnibus or taxicab, shall ply for hire on any road or stand appointed by the Commissioner of Police under section 27 of this Ordinance.

28B. No person shall drive a public service vehicle unless he shall be specially authorized in that behalf. Such person must hold a certificate of competency as provided for under section 12 of this Ordinance and if the certifying officer is satisfied that such person is a proper and fit person to be authorized to drive a public service vehicle such certifying officer shall endorse the certificate of competency to that effect. There shall be paid for such endorsement the sum of ten shillings."

9. Section 41 of the Principal Ordinance is hereby amended by the addition thereto of the following words :— **Amendment of section 41 of the Principal Ordinance.**

" In this section the word ' cattle ' includes sheep, goats, swine, horses, camels, mules and donkeys."

10. Sub-section (1) of section 48 of the Principal Ordinance is hereby amended by the insertion of the words " and if deemed necessary to drive such vehicle or to cause such vehicle to be driven for the purposes of carrying out any reasonable test," after the word " vehicle " in line 4 thereof. **Amendment of section 48 of the Principal Ordinance.**

11. The Schedule to the Principal Ordinance is hereby amended by the deletion of paragraph (3) and the substitution therefor of the following paragraph :— **Amendment of Schedule to the Principal Ordinance.**

" (3) In addition to the rates specified in paragraphs (1) and (2) above, a licence of ten shillings per passenger for each passenger which the vehicle is licensed to carry shall be paid by the owner of a taxicab or motor omnibus or five shillings per passenger in the case of any other public service vehicle."

No. 63 OF 1930.

Date of assent. [31ST DECEMBER, 1930.]

An Ordinance to Consolidate and Amend the Law relating to Townships and to provide for matters incidental thereto.

Date of commencement. *By Notice.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title and commencement.

1. This Ordinance may be cited as " the Townships Ordinance, 1930 ", and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires :—

No. 21 of 1928.

" District Council " means a District Council established under the Local Government (District Councils) Ordinance, 1928.

" Native " means a native of Africa and includes Somalis and Swahilis.

" Owner " in the case of freehold property means the person owning such property, and, in the case of any property held under a lease for a period of not less than ten years, or for the natural life of any person, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than ten years means the person holding such property under such lease, and includes any agent who receives rents or profits from any such person, and also any superintendent, overseer or manager of any such lessee in respect of the holding on which he resides as such superintendent, overseer or manager.

" Occupier " includes any person in actual occupation of land or premises without regard to the title under which he occupies and, in the case of premises sub-divided and let to lodgers or various tenants, includes also the person receiving the rent payable by the lodgers or tenants whether on his own account or as agent for any person entitled thereto or interested therein.

" Premises " includes any land, building, room, structure, tent, van, vehicle, vessel, stream, lake, dam, pool, swamp, drain or ditch (open or enclosed) whether public or private.

" Public vehicle " includes any cab, cart, omnibus, ricksha, trolley or other vehicle standing or plying for hire in any public place within a township but shall not include a motor vehicle carrying passengers for hire or reward.

" Public place " includes any road, street, thoroughfare, foot-pavement, footpath, sidewalk, lane, square, open space, garden, park or enclosed space within the township which has been or shall be at any time set apart and appropriated by proper authority for the use of the public or to which the inhabitants of the township shall at any time have or acquire a common right.

" Street " means any highway, road, or sanitary lane, or any land reserved for a highway, road or sanitary lane, and includes any bridge, footway, square, court, alley or passage whether a thoroughfare or not.

" Street trading " includes the hawking of newspapers, matches, flowers and other articles, the distributing of handbills or other advertisements, and shoeblacking and any other like occupation carried on in any public place; and " street trader " includes any person who engages in any such occupation so carried on.

" Township " means any township established by or under this Ordinance.

Divisions of Ordinance.

3. This Ordinance is divided into Parts relating to the following matters :—

Part I.—Establishment and administration of townships.

Part II.—Licences.

Part III.—Financial provisions.

Part IV.—Legal procedure and general.

Part V.—Rules and repeal.

PART I.

Establishment and Administration of Townships.

Grade A townships.

4. (1) The places declared to be townships under the provisions of the Townships Ordinance, prior to the commencement of this Ordinance, and mentioned in the First Schedule to this Ordinance, shall be deemed to be declared Grade A townships under the provisions of this Ordinance. *Cap.* 82.

Grade B townships. *Cap.* 82.

(2) The places declared to be townships under the provisions of the Townships Ordinance, prior to the commencement of this Ordinance, and mentioned in the Second Schedule to this Ordinance, shall be deemed to be declared Grade B townships under the provisions of this Ordinance.

Powers of Governor in regard to townships.

5. The Governor may from time to time, by proclamation, exercise all or any of the following powers, that is to say, he may—

(1) declare any area or place to be a Grade A township;

(2) declare any area or place to be a Grade B township;

(3) assign a name to any township so declared;

(4) define the boundaries of any township, and from time to time alter or amend such boundaries;

(5) declare any Grade B township to be a Grade A township, or vice versa;

(6) abolish and disestablish any township:

Provided that, prior to the exercise of any such powers, the proposals shall be submitted for the recommendations of the District Council (if any) having jurisdiction over the area within which it is proposed to establish a township.

Grade A townships to be administered by District Commissioner with advice of Township Committee.

6. Every township which is under this Ordinance declared to be a Grade A township shall be administered by the District Commissioner who shall, subject to the provisions of this Ordinance, act with the advice of a Township Committee to be appointed as hereinafter provided.

Grade B townships to be administered by District Commissioner.

7. Every township which is under this Ordinance declared to be a Grade B township shall be administered by the District Commissioner.

Power of Governor to appoint Township Committee.

8. The Township Committee referred to in section 6 shall be appointed by the Governor, and shall consist of such number of members as he shall think fit:

Provided that every such Committee shall include—

(*a*) persons resident in the township;

(*b*) for a township which is not situated in a Native Reserve persons nominated by the District Council (if any) having jurisdiction over the area surrounding or bordering upon the township.

PART II.

Licences.

Power to refuse licences for any trade or business.

9. Any District Commissioner, or any other person who is empowered by any law in force within any township to grant such licences, may refuse to grant any licence to carry on any trade or business which he is empowered to grant on any of the following grounds :—

(*a*) That the applicant has failed to produce satisfactory evidence of good character.

(*b*) That within the three years immediately preceding the application either the applicant or any person employed by or assisting him in his business or directly or indirectly interested therein has been convicted three times of contravening a law or rule in force within the township in regard to the trade or business for which the licence is applied for.

(*c*) That the premises in or on which the applicant intends to carry on his trade or business do not conform to the requirements of law.

(*d*) That the granting of such licence would be contrary to the public interest :

Provided, however, that any applicant for a licence whose application has been refused may appeal to the Provincial Commissioner within whose jurisdiction the premises in or on which the applicant intended to conduct his trade or business lie, and, in the event of the applicant satisfying the Provincial Commissioner that the licence was refused on insufficient grounds, the Provincial Commissioner may order such District Commissioner or other officer to grant such licence and such licence shall be granted accordingly :

Provided further that the applicant may appeal against any refusal of the Provincial Commissioner to make such order to the Supreme Court whose decision shall be final.

Power to refuse to licence certain premises

10. Any District Commissioner, or any other person who is empowered by any law in force within any township to grant such licences, may refuse to grant any licence in respect of any premises as a theatre, music hall, dance hall, public hall, concert room or other place of amusement, or as

a restaurant or eating house which he is empowered to grant, on any of the grounds mentioned in the last preceding section or on any of the following grounds :—

(*a*) That the premises in respect of which the licence is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character.

(*b*) That the granting of such licence would be calculated to cause nuisance or annoyance to persons residing in the neighbourhood :

Provided, however, that the refusal to grant any licence on any of the grounds mentioned in this section shall be subject to the same right of appeal as is provided in the last preceding section.

Power to refuse licences to ricksha boys.

11. Any District Commissioner, or any other person who is empowered by any law in force within any township to grant such licences, may refuse to grant any licence in respect of haulers of rickshas which he is empowered to grant, to the hauler of a ricksha who is medically or physically unfit or who has failed to pass any test of efficiency or to deposit any security which may be prescribed.

Power to cancel or suspend trade licence.

12. On the conviction of any person holding a trade licence granted under this Ordinance for any contravention of the law or any rule relating to the conduct of such trade, the magistrate before whom such person is convicted may cancel or suspend his licence and order that no new licence to carry on such trade within the township shall be granted to such person for a period not exceeding one year from the date of such conviction, and thereupon such person shall become disqualified to hold a licence during such period of cancellation or suspension.

Part III.

Financial Provisions.

Township Accounts.

13. The Governor may direct that a Township Account be kept for any township.

Revenues of Township Accounts.

14. There shall be paid to the credit of every Township Account—

No. 20 of 1928.

(1) all revenues derived from any rates imposed within the township under the Local Government (Rating) Ordinance, 1928;

(2) all revenues derived from any rates, fees, charges or licences payable under any Rules made under this Ordinance;

(3) one-half of all fines imposed by any competent court in respect of any contravention of the provisions of this Ordinance or of any Rules made thereunder;

(4) any sums recovered in respect of any services rendered to the Government the cost of which is chargeable against the Township Account;

(5) such contributions or grants payable to municipalities under section 87 of the Local Government (Municipalities) Ordinance, 1928, as the Governor may declare to be payable to any township from the public revenues of the Colony; No. 19 of 1928.

(6) any sums payable from the public revenues of the Colony under sub-section (3) of section 16 of this Ordinance.

Expenditure of Township Accounts.

15. There shall be charged against every Township Account all expenditure incurred on account of any undertakings, services, matters or things which are regulated, maintained or controlled under this Ordinance including—

(*a*) interest and redemption charges on any moneys provided out of Colonial loans or out of the public revenues of the Colony for capital expenditure on any such undertakings, services, matters or things;

(*b*) any necessary provision on account of depreciation of assets and works or for the renewal thereof.

Estimates.

16. (1) In the case of every township for which a township account is directed to be kept under section 13 the District Commissioner shall prepare estimates of revenue and expenditure for the township for each financial year and shall submit such estimates for the approval of the Governor in Council. Supplementary estimates shall be submitted for the like approval in the same manner.

(2) Subject to the provisions of any Rules made under this Ordinance, expenditure provided for in duly approved annual or supplementary estimates may be incurred by the District Commissioner.

(3) Any excess of expenditure over revenue for any financial year, not exceeding the amount of such excess shown by approved annual and supplementary estimates, shall be

met from the public revenues of the Colony and shall be paid to the credit of the Township Account at such times and in such instalments as the Governor shall determine :

Provided that for the purpose of this sub-section the revenue for any financial year shall be deemed to include any balance of revenue over expenditure standing to the credit of the Township Account at the commencement of such financial year.

Power of Governor to make Rules where Township Accounts are kept.

17. In the case of any township for which a township account is directed to be kept under section 13 the Governor may make Rules—

(1) for regulating and controlling the finances and accounts of any township, and the administration and management of the moneys belonging to such Township Account; and

(2) for granting to the District Commissioner powers of control over the finances of any township, for prescribing the nature and extent of such powers, and for regulating the exercise thereof.

Recovery of sanitary fees, etc. No. 19 of 1928.

18. All moneys due for sewerage, sanitary and refuse removal services shall be recoverable in manner provided by section 85 of the Local Government (Municipalities) Ordinance, 1928 and for the purpose of this section a District Commissioner shall have all the powers vested in a Council by the said section 85.

Interest on arrears of rates and charges.

19. The District Commissioner may, with the approval of the Governor, charge and recover interest on arrears of rates and on fees and charges for sewerage, sanitary and refuse removal services at a rate not exceeding one per centum per month or part of a month.

Payment of rates and other charges before transfer of premises.

20. (1) No transfer of any premises within a township in which rates or other charges have been imposed shall be passed or registered before any registration officer until a written statement signed and certified by the District Commissioner or other person authorised thereto by him, shall be produced to such registration officer, nor unless such statement shows—

(*a*) that all charges (if any) for a period of three years immediately preceding the date of application for transfer due in respect of such premises for sewerage, sanitary and refuse removal services and lawfully imposed under this Ordinance; and

(*b*) that all charges (if any) for a period of three years immediately preceding such date due in respect of such premises on account of rates imposed under Rules made under this Ordinance or under any enactment for the time being in force within the township have been paid to the District Commissioner.

(2) The District Commissioner or other person authorised thereto is hereby required to give the said statement on the demand of the owner of the premises or his attorney or agent, upon payment by him of all charges due as aforesaid and of a charge not exceeding two shillings for each such statement.

Inspection of Township Accounts.

21. The Governor may, if he thinks fit, direct that any Township Account shall be examined and reported upon in such manner as he may prescribe.

PART IV.

Legal Procedure and General.

General penalties.

22. Every person who is guilty of any offence against this Ordinance or any rule in force within any township shall, for every such offence, be liable to the penalty expressly prescribed by this Ordinance or by such rule and, if no such penalty be prescribed, then to a fine not exceeding ten pounds.

Recovery of penalties.

23. All fines, penalties or other moneys payable in respect of any offence against this Ordinance or any rule in force within any township may be recovered before any court of competent jurisdiction.

Default in payment of fines.

24. Save as in this Ordinance is otherwise expressly provided, whenever any fine shall have been imposed under the provisions of this Ordinance or of any rule in force within any township and the person convicted shall not forthwith pay the same, the court imposing the fine may direct that such person shall suffer imprisonment for a period not exceeding one month if the fine does not exceed ten pounds, or for a period not exceeding three months if the fine exceeds ten pounds.

Persons offending against order or notice to be deemed guilty of an offence.

25. When any matter or thing is by this Ordinance, or by any order or notice made and published under the authority thereof, directed or prohibited to be done, or where any authority is given by this Ordinance to any person to

direct or prohibit any matter or thing to be done, and such act so directed to be done remains undone or such act so prohibited to be done is done, then in every such case every person offending against such direction or prohibition shall be deemed to be guilty of an offence against this Ordinance.

Books of townships to be *prima facie* evidence of sums due.

26. The books and registers of any township and any extracts therefrom certified by the District Commissioner or other officer authorised thereto by him shall in any proceedings for the recovery of rates, sewerage, sanitary or refuse removal fees or charges for water or any other service be *prima facie* evidence of the amounts so due.

Contraventions of Ordinance by company or partnership.

27. If any contravention of this Ordinance is committed by a company or partnership, every director, manager, secretary, or person having the management or control in the Colony, of the business or property in the case of a company, and every such person and each partner in the case of a partnership, shall be responsible therefor, and shall be liable to the punishment prescribed for such contravention :

Provided that nothing in this section shall be deemed to exempt from liability any other person guilty of any such contravention.

Power to enter premises.

28. (1) Any person, duly authorised in writing by the District Commissioner may, at all reasonable times, enter into and upon any premises within the township for the purpose of exercising any power of inspection, inquiry, or execution of works which is given under this Ordinance or by any rule in force within the township.

(2) The Medical Officer of Health or any sanitary inspector may, when entering into or upon any premises in exercise of the powers conferred by this section, be accompanied by a European police officer.

(3) Any rule made under this Ordinance may confer on the District Commissioner or any other person such powers of inspection, inquiry, and execution of works as may be reasonably necessary for the proper carrying out or enforcement thereof.

Offences.

29. The following persons shall be liable to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months :—

(*a*) Any person who wilfully obstructs the District Commissioner or any other duly authorised person in the execution of his duty under this Ordinance.

(*b*) Any occupier of premises who prevents the owner of such premises from complying with any of the requirements of the District Commissioner.

(*c*) Any occupier of premises who, on demand, refuses or wilfully omits to disclose or wilfully misstates the name of the owner of such premises.

(*d*) Any person who refuses to answer to the best of his ability or knowingly makes false answers to inquiries made by the Medical Officer of Health or any sanitary inspector especially authorised by him in writing for the purpose of discovering cases of any infectious disease or possible sources of infection of any such disease.

Conduct of prosecutions.

30. Any person authorised thereto by the District Commissioner, may prosecute in subordinate courts for all contraventions of this Ordinance, and the provisions of any law relating to prosecutions by private persons shall apply to all such prosecutions.

Saving of Public Health Ordinance. *Cap.* 124.

31. Nothing in this Ordinance shall be deemed to override the provisions of the Public Health Ordinance or any Ordinance amending or replacing the same.

PART V.

Rules and Repeal.

Rules for public undertakings, services, etc.

32. The Governor may make rules for regulating, controlling and managing any public undertakings, services or matters which have been, or may at any time be constructed, established, maintained or carried on for the benefit of the inhabitants of the township, and more especially for the following :—

(1) Sanitary services.

(2) Cemeteries, mortuaries, crematoria and funerals.

(3) Lavatories and public conveniences.

(4) Slaughter-houses, and depôts for the inspection of milk and dead meat.

(5) Wash-houses, laundries and places for washing clothes.

(6) Ambulances.

(7) Pauper burials.

(8) Disinfecting stations.

(9) Roads, streets, bridges, parks, squares. gardens, recreation grounds and all other open or enclosed public places.

(10 Sewerage and drainage works.

(11) Waterworks.

(12) Electricity undertakings.

(13) Numbering houses or other buildings fronting upon streets and other public places.

(14) Planting trees, flowers and shrubs in public places.

(15) Lighting streets and other public places.

(16) Pounds.

(17) Camping, grazing and outspan grounds.

(18) Markets.

(19) Fire brigades.

(20) Native locations and villages.

(21) Swimming-baths and bathing establishments.

(22) Boats and boating establishments.

(23) Dipping tanks.

(24) Weighing machines.

(25) Libraries.

(26) Sale of by-products resulting from any undertaking or service.

(27) The imposition and recovery of fees and charges on account of any of the undertakings, services or matters in respect of which rules may be made under this section.

(28) The imposition and recovery of rates on land and buildings in any township where the provisions of the Local Government (Rating) Ordinance, 1928, have not been applied, and the definition of land and buildings and the provision of a method of assessment for the purpose of the imposition of such rates.

No. 20 of 1928.

General rules.

33. The Governor may make rules in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants or for the good rule and government of any township and more especially for all or any of the following purposes:—

Township Advisory Committees, etc.

(1) For regulating the duties and proceedings of Township Committees appointed under this Ordinance.

Sanitary services.

(2) For compelling the use of any sanitary service for the removal and destruction of or otherwise dealing with night-soil, slops, rubbish, carcases of dead animals, and refuse of all kinds.

Public health.

(3) For preserving the public health.

Septic tanks, etc.

(4) For regulating, controlling, or prohibiting the construction or use of septic tanks and filter installations or other works for the disposal of sewage on private property.

Compelling provision of proper water supply.

(5) For compelling the provision of a proper and sufficient supply of water for every dwelling-house or other premises.

Compelling owners of premises to take water from public water scheme.

(6) For compelling owners of premises which, in the opinion of the District Commissioner, are not provided with a sufficient supply of good and wholesome water for drinking and domestic purposes to take such a supply from any pipe or main belonging to a public water scheme that is within reasonable distance of such premises.

Water meters.

(7) For providing water meters and for determining the areas or premises within which such meters shall be installed and used.

Prohibiting erection or conversion of certain buildings.

(8) For prohibiting the erection of buildings or the conversion of existing buildings for use as stables or cowsheds for trading purposes in residential areas, and for defining areas where such buildings may or may not be erected or used.

Definition of non-business areas.

(9) For defining the streets or areas within which shops, warehouses, factories or business premises may not be erected, or within which specified trades, businesses or callings, or street trading may not be established or carried on.

Dangerous and offensive factories, etc.

(10) For regulating, inspecting, supervising and licensing all businesses, factories, and workshops which, by reason of smoke, fumes, gases, dust, smell, noise, vibration or other cause, may be or become sources of danger, discomfort or annoyance to the neighbourhood, for prescribing the conditions subject to which such businesses, factories or workshops shall be carried on and for prohibiting the carrying on thereof unless the prescribed licences shall have first been obtained and the prescribed conditions complied with.

Noisome and offensive trades.

(11) For prohibiting, regulating, inspecting, supervising and licensing noisome and offensive trades, and for compelling residents to keep their premises free from offensive or unwholesome matter.

Private slaughter-houses and meat shops.

(12) For regulating, inspecting, supervising and licensing the killing of cattle and other animals and the sale of butchers' meat, for regulating the establishment and localisation of slaughter-houses and meat shops and compelling their maintenance in a clean and proper state, and for authorising the entry on and inspection of slaughter-houses and meat shops and the cattle, carcases and meat therein.

Public slaughter-houses.

(13) For prohibiting the slaughtering of animals intended for human consumption elsewhere in the township than in public slaughter-houses, except in the case of animals which the occupier of any premises may slaughter for his own or his family's consumption.

Premises where food or drink is manufactured or sold.

(14) For regulating or inspecting, supervising and licensing tea-rooms, cafés, restaurants, hotels, eating, boarding and lodging houses, bakehouses, butchers' shops, grocers' shops, and all factories and places where articles of food or drink are manufactured or prepared for sale or use, or are stored or sold.

Sale of milk or milk products.

(15) For regulating, supervising and licensing purveyors of milk and ice-cream makers or vendors, for regulating, inspecting, supervising and licensing dairies, milk shops, and cowsheds, for regulating the conveyance and distribution and securing the identification of the source of milk or milk products distributed, offered for sale, or sold within the township, for prescribing the conditions subject to which

any milk or milk products produced or prepared within or without the township may be introduced, distributed, stored, sold or used within the township and for prohibiting the introduction, distribution, storage, sale or use within the township of any milk or milk products from any source within or without the township where it appears, on the certificate of the Medical Officer of Health, that the consumption of such milk or milk products is likely to cause the outbreak or spread of any infectious or contagious disease.

Pedlars and hawkers.

(16) For regulating, supervising and licensing pedlars and hawkers.

Destruction of rats and other vermin.

(17) For securing the prevention and destruction of rats and other vermin within the township and for prohibiting or regulating the laying down and use of poison for the destruction of animals or vermin.

Mosquitoes and malaria.

(18) For preventing and abating conditions permitting or favouring the breeding of mosquitoes and flies, and generally, for the prevention of malaria and other insect-borne diseases.

Laundries, etc.

(19) For regulating, inspecting and licensing wash-houses, laundries and places for washing clothes.

Barbers and hairdressers.

(20) For regulating barbers and hairdressers and barbers' and hairdressers' shops.

Buildings.

(21) (*a*) For regulating the construction, alignment and elevation of all buildings or other structures and all parts thereof, for compelling the pulling down, removal or rendering safe of all buildings, walls, bridges, earthworks, and verandahs of an unsafe or dangerous character, or which have been allowed to fall into a dilapidated condition, and for doing any such work at the cost of the owner and recovering such cost.

(*b*) For prohibiting or regulating the erection or use of back-to-back tenements or houses, and for ensuring sufficient air space and ventilation between houses and adequate through ventilation within houses.

(*c*) For prohibiting the owners or occupiers of any premises from allowing any wells or other excavations thereon to be in an unprotected or dangerous state, for compelling the fencing, filling in or covering over of wells or excavations which are in such a state, and for doing such work at the cost of the owner or occupier and recovering such cost .

(*d*) For regulating, controlling or prohibiting the erection or use of any temporary or movable structures, whether standing on wheels or otherwise, and for prohibiting or restricting the use of tents or similar structures for business or dwelling purposes.

(*e*) For preventing the discharge of any guttering or down-pipe on to any footway, pavement or sidewalk, and for securing, regulating and controlling the laying down of pipes to carry any outflow therefrom to such gutter or drain as may be authorised or approved for the purpose.

(*f*) For regulating the sizes of pieces of ground on which buildings may be erected, for prescribing with due regard to the local conditions of different parts of the township the extent and disposition of the open space or private land to be provided and maintained in connection with new buildings in order to secure proper sanitary conditions, amenity and convenience, and for prohibiting the erection of buildings on any open space so provided.

(*g*) For preventing the erection of buildings on ground contaminated by any faecal, animal or vegetable matter.

(*h*) For requiring and regulating the lighting and cleansing of staircases and passages used in common by different tenants of the same building, and the cleansing, drainage and paving of courts, yards, and open spaces used in connection with dwellings.

(*i*) For prescribing the frontage lines, securing the regularity of lines and level of buildings and of the architecture of buildings, and the removal, alteration and prevention of projections or obstructions in front of buildings.

(*j*) For preventing the erection, alteration or use of any building or structure whatsoever which, either in itself or from the circumstances or nature of the locality in which it is or is to be placed, is a disfigurement to the town or an annoyance to the inhabitants thereof, and for securing the removal of projections over streets.

(*k*) For preventing the erection of any building or structure whatsoever which in the opinion of the District Commissioner is or is likely to be objectionable by reason of either the nature or construction of the building itself, or the uses to which it is put, or its environment.

(*l*) For regulating or prohibiting the use as a dwelling of any building not erected for that purpose.

(*m*) For preventing the subdivision or alteration of buildings or dwellings in such a manner as might be calculated to be injurious to health or to depreciate the value of properties in the locality or to cause annoyance to the inhabitants of the neighbourhood.

(*n*) For preventing buildings being put to uses which might be calculated to depreciate the value of neighbouring property or to interfere with the convenience or comfort of neighbouring occupiers.

(*o*) For regulating, restricting or prohibiting the erection of dwellings or structures of wood or wood and iron or canvas or of hoardings or fences.

(*p*) For regulating the inspection of buildings and structures and the erection and use of scaffolding and hoarding during the construction, demolition, repair or alteration of any building or structure.

(*q*) For determining and regulating—

(i) the structure of walls, foundations, roofs, chimneys, windows, guttering, down-piping and all other parts of buildings, whether new or already existing, in order to secure stability, sufficient height, light and ventilation, and the proper carrying off of rainwater as well as for the prevention of fires and for purposes of health;

(ii) the sufficiency of the space about buildings in order to secure a free circulation of air and the proper ventilation of buildings;

(iii) the closing of buildings or parts of buildings which are unfit for human habitation;

(iv) adequate provision for the escape of the occupants of any building, in the event of an outbreak of fire, by way of ordinary or special doors, outside iron stairways or other means, having regard to the size and use of the building.

(*r*) For the giving of notice and the deposit of plans and sections by persons wishing to construct or alter buildings, for the approval or otherwise of all plans and sections of any such building or alteration, for the removal, alteration, or pulling down, at the cost of the owner of any work begun or done in contravention of any rule, and for preventing the occupation of any new or altered building until a certificate of the fitness thereof for habitation shall have been issued by the District Commissioner.

Underground rooms.

(22) For prohibiting or regulating the use of underground rooms for human habitation or occupation.

Grazing land.

(23) For providing for the due and proper care of the common pasture or other public land, and for prohibiting or regulating grazing thereon.

Brickworks, etc.

(24) For granting permits to make bricks or to dig and burn lime, or to dig and remove clay, gravel, peat or turf, or to quarry or crush stone or to cut or burn firewood, brushwood, or grass upon public lands.

Dangerous animals.

(25) For preventing or regulating the keeping of stallions, bulls, rams, swine, bees, and wild or dangerous animals, within the township.

Dogs.

(26) For regulating or licensing the keeping of dogs, for providing for the seizure, sale or destruction of vicious, dangerous, ownerless and unlicensed dogs, and for prohibiting bitches in heat from running loose in streets or public thoroughfares.

Traffic and public places.

(27) (*a*) For regulating the traffic and preventing and removing obstructions in or on public places, for dealing with live stock and dead, diseased or injured

animals found in any public place, and for restricting and regulating the driving of live stock through streets or other public thoroughfares.

(*b*) For regulating and controlling traffic, processions, and gatherings at, in or on public places.

(*c*) For preventing any person or vehicle from carrying or conveying any article, burden or load so as to obstruct or incommode passengers or vehicles in any public place, and for preventing the wheeling of wheelbarrows, cycles or other vehicles on any sidewalk or foot-pavement except for the purpose of crossing the same to or from any building.

(*d*) For preventing persons from congregating with others and so causing obstruction in any public place, except such as may be set apart for the purpose.

Street trading.

(28) For regulating street trading and for licensing and supervising street traders.

Strolling musicians.

(29) For regulating, licensing, supervising, restricting, or prohibiting the playing of musical instruments, or singing or performing for profit, in or on any public place.

Public vehicles, etc.

(30) (*a*) For regulating, supervising and licensing porters, public carriers, carters, motor vehicle attendants, omnibuses, cabs, rickshas, trolleys and all other public vehicles and the drivers or haulers thereof; for fixing the charges or fares whether by distance or by time within or without the township; the number of passengers and the weight, dimensions, and nature of the load to be carried; and for enabling the District Commissioner to endorse, suspend or cancel any such licence.

(*b*) For providing in the interests of public safety for the periodical examination of all public vehicles, and for prohibiting the use of any vehicle as a public vehicle unless a certificate of efficiency under the hand of the District Commissioner has first been obtained by the applicant for a licence or by the licensee.

Prohibition of certain classes of vehicles.

(31) For prohibiting or restricting, notwithstanding any provision of any law relating to traffic, the use of specified classes of vehicles in certain streets or areas within the township.

Private vehicles.

(32) For regulating and licensing all private vehicles not hereinbefore provided for, which are not licensed under the provisions of any law relating to traffic.

Bicycles and tricycles.

(33) For regulating, supervising and licensing bicycles and tricycles and for registering and stamping such vehicles.

Petroleum, explosives, etc.

(34) (*a*) For regulating the conveyance, removal, transport, manufacture, storage, sale and use of petroleum, explosives, fireworks, gas and all other inflammable liquid or combustible material.

(*b*) For prescribing the routes and speeds by and at which, and the days and times when, explosives or inflammable material may be conveyed.

Conveyance of meat.

(35) For regulating the conveyance of meat or dead animals through or along any street or public thoroughfare.

Placing of articles on window sills.

(36) For preventing the placing of articles on window sills or in any other position near any street in such a manner as may be likely to cause danger or annoyance to passers-by.

Street advertisements.

(37) For regulating, supervising, inspecting and licensing the display of advertisements or advertising devices in or in view of any street or public thoroughfare, for prohibiting the display of advertisements, devices or pictures which are indecent or suggestive of indecency, and for preventing the display of advertisements or advertising devices in such places or in such manner or by such means as would in the opinion of the District Commissioner be likely to affect injuriously the amenities of or to disfigure any neighbourhood.

Markets.

(38) For prohibiting the establishment of any market within the township without permission.

Public sales.

(39) For regulating public sales held on any public or open space or in any public building.

Sales of live stock.

(40) For regulating, supervising, inspecting and licensing places used for the purpose of selling publicly, or exposing to public sale any cattle, horses, sheep,

goats, pigs, poultry or other live stock, or licensing persons to conduct such sales in public markets or elsewhere, and for requiring the deposit of security by an applicant for such licence.

(41) For preventing and extinguishing fires, and for compensating the owner of buildings removed in order to prevent the spread of fires. Fires and fire brigades.

(42) For regulating and licensing theatres, music halls, public halls, concert rooms, public billiard rooms, and other places of public amusement. Theatres, etc.

(43) For regulating, supervising, inspecting and licensing places of public recreation and public resort, and for regulating the means of ingress and egress in any such places. Places of public resort.

(44) For regulating the use of streets and other public places by natives. Use of streets by natives.

(45) For prohibiting or regulating dances. Dances.

(46) For regulating the housing of natives by their employers. Native housing.

(47) For regulating and licensing wash-boys and native labourers other than those employed in industrial concerns or domestic service. Native labour.

(48) For regulating, supervising and inspecting native locations or villages, for regulating the charges to be made for the occupation of buildings in such locations or villages, and for prohibiting the residence of natives elsewhere than within such locations or villages except such natives as are employed in domestic services and are lodged on the premises of their employers and such natives as may be exempted by the Governor. Native locations.

(49) For regulating the issue of passes to and the carrying of passes by natives within the township, and for fixing charges payable by natives for passes, not exceeding a maximum to be approved by the Governor in Council. Native passes.

(50) For regulating, supervising and licensing dangerous trades and the use of machinery in connection therewith. Dangerous trades.

Dealers in second-hand goods.

(51) For regulating, supervising and licensing the trade, business or occupation of dealers in second-hand goods, including bottles, sacks, bones and tins.

Cycle dealers.

(52) For regulating, supervising and licensing cycle dealers, manufacturers and repairers.

Swimming-baths.

(53) For regulating, supervising, inspecting and licensing swimming-baths and bathing establishments, and for prohibiting or regulating bathing in any open piece of water within the township.

Boating establishments.

(54) For regulating, supervising, inspecting and licensing boating establishments, for licensing boats whether kept for hire or otherwise, and for regulating the use of and fixing the number of persons to be carried in such boats.

Undertakers.

(55) For regulating, supervising and licensing undertakers, and for regulating the conveyance and disposal of dead bodies.

Protection of public property.

(56) For protecting from damage or interference any public works or property situated or being in, under or over any public or other place within the township.

Quarrying of stone, etc.

(57) For prohibiting, restricting or regulating the quarrying of stone, lime, clay or other material on any premises.

Houses of ill-fame.

(58) For suppressing houses of ill-fame.

Public decency, indecent literature, etc.

(59) For preserving public decency, for prohibiting the use of indecent language in public places, for prohibiting the sale or exhibition of indecent literature, pictures and devices, and for prohibiting the sale or exhibition of pictures or devices of the nude.

Exhibition of monstrosities.

(60) For prohibiting or restricting the public exhibition of monstrosities, freaks of nature, or any abnormal person or animal.

Begging.

(61) For prohibiting begging in any public place.

Gambling houses.

(62) For suppressing gambling houses.

Firearms.

(63) For regulating the possession and use of firearms and the carrying of weapons by which bodily hurt can be inflicted.

Fencing of plots.

(64) For enforcing and regulating the fencing of plots, and for regulating the use of barbed wire for fencing.

(65) For regulating and licensing livery stables and any place where horses or other animals are kept for hire. **Livery stables.**

(66) For regulating the construction by any owner of land at his own expense of a footway along the side of any street abutting on his land, the paving of such footway with concrete blocks or stones or in any other way, and the construction and paving, at the cost of such owner, of any such footway. Construction of footways.

(67) (*a*) For regulating sewerage and drainage, for compelling the construction and connection at the cost of the owner, of private drains with public drains, sewers or pipes, and for regulating the construction, at the cost of the owner, of all house drains in so far as they connect with and extend from the main sewer to the boundary of the property concerned. **Sewerage and drainage.**

(*b*) For regulating the giving of notice and the deposit of plans and sections by persons intending to carry out any sewerage or drainage work on any land or premises and the approval or disapproval thereof and for the removal or alteration of any sewerage or drainage works begun or done in contravention of any Rules.

(68) (*a*) For preventing, except with the approval of the Governor, the subdivision or cutting up of land, or the sub-division of existing building plots into smaller areas. **Sub-division of land.**

(*b*) For prescribing the conditions to be fulfilled and the information and plans to be furnished before such approval may be granted, for imposing upon the applicant for any sub-division such obligations in respect of the provision, construction and maintenance of roads, drains and water mains as the Governor may decide to be necessary; and generally for the proper regulation of the sub-division and cutting up of land within the township.

(*c*) For providing that every sub-divisional plan approved by the Governor together with a certificate from the District Commissioner to the effect that such sub-division plan has been approved shall be forwarded to the Registrar of Titles, who shall register the same against the title to such land at the cost of the

applicant for the subdivision; and for providing that no transfer of any subdivision shall be registered in any deeds registry unless and until the sub-divisional plan shall have been registered as aforesaid.

(*d*) For preventing the withdrawal, cancellation or alteration, except with the approval of the Governor, of any subdivisional plan which has been approved by him.

Lodging-houses.

(69) For regulating, supervising and licensing lodging-houses and lodging-house keepers.

Removal of trees, etc., overhanging streets.

(70) For requiring the owner of any premises to do any of the following acts—

(*a*) remove, lower or trim to the satisfaction of the District Commissioner any trees, shrub or hedge overhanging or interfering in any way with the traffic on any road or street or with any public wires or works;

(*b*) remove any dilapidated fence or structure abutting upon any public place.

Planting trees.

(71) For planting and preserving trees, flowers and shrubs, for prohibiting or regulating the planting of trees and shrubs in public places, and for maintaining, cutting or removing any such trees or shrubs and preventing the removal or injury thereof.

Lighting installations.

(72) For regulating, supervising and inspecting the construction and maintenance of all installations for the supply of light, heat or power by means other than electricity.

Fee for licences.

(73) For imposing and recovering fees and charges in respect of any licence or permit which may be issued under any rules made under this section.

Penalties for breaches of rules.

34. The Governor may, by rule, prescribe a fine or imprisonment, or both such fine and imprisonment, for the breach of any rule made under this Ordinance, and may also prescribe different fines and different periods of imprisonment in cases of successive or continuous breaches, but no such fine shall exceed fifty pounds, and no such period of imprisonment shall exceed six months.

Any rule may further provide that, in addition to any such fine and imprisonment, any expense incurred by the Government or by any Township Fund in consequence of any breach of such rule, or in the execution of any work directed by any such rule to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

Repeal and saving clauses.

35. The Townships Ordinance (Chapter 82 of the Revised Edition), as amended by the Townships (Amendment) Ordinance, 1926, and the Townships Fees and Conservancy Ordinance (Chapter 83 of the Revised Edition) are hereby repealed :

Provided that :—

(1) All rules made under any of the said Ordinances, which are in force within any township at the date such township is established by or under this Ordinance, shall be deemed to be rules made under this Ordinance, and shall continue to be of full force and effect within the area to which they apply until they are altered or revoked under this Ordinance :

(2) All rates, fees and debts of whatsoever description due or payable or recoverable under the said Ordinances shall be payable or recoverable in the same manner as if the said Ordinances were still in force :

(3) All licences, registrations and permits issued, made or granted under the said Ordinances shall continue in force for the period, if any, specified in such licences, registrations or permits, unless the same are sooner suspended or cancelled under or in pursuance of this Ordinance.

FIRST SCHEDULE.

GRADE A TOWNSHIPS.

Gilgil.
Kericho.
Kisumu.
Kitale.
Machakos.
Naivasha.
Nanyuki.
Nyeri.
Thika.

SECOND SCHEDULE.

GRADE B TOWNSHIPS.

Elburgon.
Embu.
Fort Hall.
Gazi.
Kabarnet.
Kajiado.
Kakamega.
Kapsabet.
Kiambu.
Kibigori.
Kibwezi.
Kijabe.
Kipini.
Kisii.
Kitui.
Kwale.
Lamu.
Limuru.
Londiani.
Lumbwa.
Malindi.
Marsabit.
Meru.
Molo.
Moyale.
Muhoroni.
Narok.
Narromoru.
Ngong.
Njoro.
Ravine.
Ruiru.
Rumuruti.
Thomson's Falls.
Vanga.
Voi.
Wajir.
Yala.

No. 64 OF 1930.

[31ST DECEMBER, 1930.] Date of assent.

An Ordinance to Provide for the Organisation, Discipline, Powers and Duties of the Police Force and for Matters Incidental Thereto.

By Notice. Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as " the Police Ordinance, 1930," and shall come into operation on such date as the Governor by notice in the Gazette may appoint. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires :— Interpretation.

" Police officer " means any person who is a member of the Police Force;

" Commissioner " means the Commissioner of Police;

" Inspector " includes a Chief Inspector, an Inspector, a Sergeant Instructor, and an Assistant Inspector;

" Commissioned Officer " means any police officer of or above the rank of Assistant Superintendent;

" Non-Commissioned Officer " means any police officer of or above the rank of Assistant Sub-Inspector, first grade, but below the rank of Assistant Superintendent;

" Subordinate Officer " means any police officer below the rank of Assistant Sub-Inspector, first grade;

" Follower " means and includes any tracker, porter, syce, boatboy, sweeper or female searcher attached to or employed in connection with the Police Force;

" Property " includes any movable property, money or valuable security;

" Imprisonment " means imprisonment of either description.

CONSTITUTION AND ADMINISTRATION.

Constitution of Police Force.

3. The Police Force (to be known as " The Kenya Police ") shall be formally enrolled and shall consist of such

number of commissioned officers, non-commissioned officers and subordinate officers as may from time to time be ordered by the Governor.

Composition of Force.

4. The Police Force shall, unless otherwise ordered by the Governor, consist of the following ranks :—

Commissioned Officers :

Commissioner
Deputy Commissioner
Assistant Commissioner
Superintendents
Assistant Superintendents.

Non-Commissioned Officers :

Chief Inspectors
Inspectors
Sergeant Instructors
Assistant Inspectors
European Constables
Chief Sub-Inspectors
Sub-Inspectors, first grade
Sub-Inspectors, second grade
Assistant Sub-Inspectors, first grade

Subordinate Officers.

Assistant Sub-Inspectors, second grade
Sergeants, first grade
Sergeants, second grade
Sergeants, third grade
Corporals
Constables, first grade
Constables, second grade
Constables, third grade
Bandsmen
Buglers.

Special Departmental Police.

5. The Governor may from time to time cause to be enrolled for special departmental duties such number of men as he shall think fit to be Railway, Harbour, Water or other police, and may by regulations provide for the constitution and administration thereof. Subject to such regulations such police shall be police officers within the meaning of this

Ordinance and shall have all such powers and perform all such duties as the Commissioner, with the approval of the Governor, after consultation with the High Commissioner for Transport, may from time to time direct.

Functions of Police Force

6. The Police Force shall be employed in and throughout the Colony for preserving the peace, for the prevention and detection of crime, for the apprehension of offenders against the peace, and for the performance of such duties shall be entitled to carry arms.

Employment of Police Force in times of emergency.

7. (1) The Governor may, in case of war or other emergency, employ the Police Force or any part thereof in the defence of the Colony :

Provided that, for the purposes of interior economy, the Police Force shall remain under the command of the Commissioner or such commissioned or non-commissioned officer as may be present.

(2) When called upon to serve with the Regular Forces, the Police Force or such part thereof as may be so employed shall be subject to military law.

General powers of Commissioner.

8. (1) The Commissioner shall, subject to the orders and directions of the Governor, have the command, superintendence and direction of the Police Force, and, subject to the provisions of this Ordinance and of such regulations as may from time to time be made by the Governor in Council, may make such appointments, promotions and reductions in ranks and grades, other than those of commissioned officers, as he may see fit.

(2) The Commissioner may, subject to the orders and directions of the Governor, from time to time make orders for the general government of police officers in relation to their enlistment, transfer (including expenses in connection therewith), discharge, training, arms and accoutrements, clothing and equipment, places of residence, classification and particular services, as well as their distribution and inspection, and such other orders as he may deem expedient for preventing neglect and for promoting efficiency and discipline on the part of police officers in the discharge of their duties.

(3) Any act or thing which may be done, ordered or performed by the Commissioner may, subject to the orders and directions of the Commissioner, be done, ordered or performed by the Deputy Commissioner or the Assistant Commissioner.

Administration of Police Force.

9. (1) The administration of the Police Force throughout the Colony shall, subject to the orders and directions of the Governor, be vested in the Commissioner: Provided that in matters connected with the distribution of the Police Force and the prevention and detection of crime in any place, the Commissioner shall consult the administrative officer in charge thereof.

(2) The administration of the Police Force in any place shall be vested in such police officer as may be posted in charge thereof. Such officer shall be subordinate to and shall carry out the orders of the Commissioner in all matters connected with the administration, discipline, interior economy and training of the Force under him: Provided that in matters connected with the preservation of the peace such officer shall be subject to the general control and shall carry out and obey the orders and directions of the administrative officer in charge of such place.

(3) In any place where there shall be no commissioned officer or inspector in charge of the Police Force stationed therein, the administrative officer in charge thereof shall exercise local control over such police, but shall be subject to the orders and directions of the Commissioner in respect of the discipline and interior economy thereof. The training given to such police shall be in accordance with the standing orders laid down by the Commissioner.

Police officers to keep prescribed books and to render returns.

10. Every police officer in charge of a police station shall keep a general diary or occurrence book in such form as the Commissioner may from time to time direct, and shall record therein all complaints and charges preferred, the names of all persons arrested, the offences charged against them, the weapons or property which shall have been taken from their possession or otherwise, the names of the complainants, and the names of any witnesses who shall have been examined; and shall also keep such further books and records and shall render such returns to the Commissioner as the Commissioner may from time to time direct.

Administrative officers to keep books and to render returns in certain cases.

11. The administrative officer in charge of any place where there is a detachment of police but where there is no commissioned officer or inspector in charge shall keep such books and shall render such returns to the Commissioner as the Commissioner may from time to time direct.

Powers of magistrates not to be affected.

12. Save as expressly provided nothing in this Ordinance shall be deemed to affect any of the powers of a magistrate in relation to the Police Force as contained in the Criminal Procedure Code and the Penal Code.

No. 11 of 1930.
No. 10 of 1930.

Regulations.

13. The Governor in Council may make regulations, not inconsistent with this Ordinance, relating to all or any of the following matters, namely :—

(1) The numerical establishment of the Police Force, the conditions of service, and the various grades, ranks and appointments therein;

(2) The duties to be performed by members of the Police Force, and for their guidance in the discharge of such duties;

(3) The pay and allowances of the Police Force;

(4) The description and issue of arms, ammunition, accoutrements, uniforms and necessaries to be supplied to police officers;

(5) All matters which are required by this Ordinance to be provided for by regulations;

(6) Generally, for the good order and government of the Police Force.

APPOINTMENT, ENLISTMENT, SERVICE AND DISCHARGE.

Application of Ordinance to existing Police Force.

14. All the provisions of this Ordinance and of all orders or regulations which may at any time be made in pursuance thereof shall extend to all persons who join the Police Force after the commencement of this Ordinance, and to those persons who at the commencement of this Ordinance shall be serving in the Police Force who within six months of the commencement of this Ordinance elect in writing to be subject to the provisions of this Ordinance:

Provided that any person who at the commencement of this Ordinance is serving in the Police Force and who is subsequently promoted in rank shall on such promotion be deemed to be subject to the provisions of this Ordinance.

Appointment of police officers.

15. (1) Commissioned officers shall be appointed by the Governor with the approval of the Secretary of State and in such manner as the Secretary of State may direct: Provided that in the absence of such directions such officers shall be appointed in a similar manner to other officers in the service of the Colony.

(2) Non-commissioned and subordinate officers shall be appointed by the Commissioner subject to the provisions of this Ordinance and of such regulations as may be made thereunder.

Enlistment of constables.

16. (1) Every European police constable shall be enlisted to serve in the Police Force for a tour of service of not less than twenty months' nor more than thirty months' continuous residential service to be reckoned from the date of his arrival or enlistment in the Colony, and for such additional period as may from time to time be fixed by the Governor :

Provided that the tour of service and such additional period shall not together exceed thirty-six months.

(2) Any European constable of good character who has satisfactorily completed a period of not less than twenty-four months' continuous residential service may be placed on the permanent and pensionable establishment in accordance with the regulations in force for the time being for European officers in the service of the Colony, and in such event such period shall count towards pensionable service.

(3) Every Asiatic officer shall be enlisted to serve in the Police Force for a probationary period of not less than twelve months' continuous residential service (hereinafter referred to as " probationary period ") to be reckoned from the date of his arrival or enlistment in the Colony, and for such additional period as may from time to time be fixed by the Governor : Provided that the probationary period and such additional period shall not together exceed thirty-six months.

(4) Every African subordinate officer shall be enlisted to serve in the Police Force for a period of five years, or for such less period as may from time to time be fixed by the Governor, such period to be reckoned from the date on which such subordinate officer shall have been approved for service and taken on the strength of the force.

Declaration on enlistment.

17. Every police officer shall on joining the Police Force make the following declaration by oath in such manner as he may declare to be most binding on his conscience :—

> I, A.B., do solemnly and sincerely declare that I will be faithful and bear true allegiance to His Majesty King George the Fifth, his heirs and successors, and that I will faithfully serve His Majesty the King, his heirs and successors, during my service in the Police Force and will obey all orders of the Governor and of the officers

placed over me, and will subject myself to all Ordinances, orders and regulations relating to the Police Force now in force or which may from time to time be in force.

Signature or mark of police officer.....

Declared at ..... this .....

day of ....., 19.....

Before me .....

(Signature of Magistrate or Officer.)

The declaration shall be made before a magistrate or commissioned officer and shall be signed or marked by the police officer.

Police officer not to engage in other employment.

18. No police officer shall without the consent of the Governor engage in any employment or office whatever other than his duties under this Ordinance.

Leave conditions.

19. (1) European police officers shall be eligible for leave in accordance with the regulations for the time being in force for European officers in the service of the Colony.

(2) Asiatic police officers shall be eligible for leave in accordance with the regulations for the time being in force for the Asiatic staff, other than clerks, in the service of the Colony.

(3) African subordinate officers not serving in the Northern Frontier Province or the Turkana Province may be granted local leave on full pay not exceeding fourteen days in any one year.

(4) African subordinate officers serving in the Northern Frontier Province or Turkana Province may at the expiration of three years' continuous service in either or both of such Provinces be granted local leave on full pay not exceeding sixty days.

(5) Where part of the service of an African subordinate officer has been in the Northern Frontier Province or the Turkana Province such officer may be granted local leave on full pay in proportion to the amounts which would be due under sub-sections (3) and (4) of this section.

(6) Notwithstanding anything in this section contained, African subordinate officers domiciled in Somaliland or Nyasaland may subject to re-engagement be granted leave on full pay not exceeding one month for each completed year of

service in respect of which no leave shall have been granted, and, except with the approval of the Governor, not exceeding in any case five months.

(7) Any African subordinate officer who, being entitled to his discharge at the end of any period of service, re-engages for further service or who has completed three years of his original term of service on enlistment, may, with the approval of the Commissioner, be granted leave on full pay not exceeding one month for each completed year of service in respect of which no leave shall have been granted, and not exceeding in any case three months.

Re-engagement.

20. (1) Any Asiatic non-commissioned officer or any subordinate officer of good character who has completed or is within three months of completing his period of enlistment may, with the approval of the Commissioner, re-engage to serve for a further period of one or more years as may be fixed by the Commissioner but not exceeding three years and may similarly re-engage for a third or any subsequent period until he shall have completed a whole period of twelve years, reckoning from the date of his enlistment.

(2) Upon completing such period of twelve years he may, if he so desires, and with the approval of the Commissioner, re-engage to serve for any period or periods as may be fixed by the Commissioner until he shall have completed a total period of twenty-one years, reckoning from the date of his enlistment.

(3) Upon completing such period of twenty-one years he may, if he so desires, and with the approval of the Commissioner and of the Governor, continue in the Police Force in the same manner and in all respects as if his term of service were still unexpired, except that it shall be lawful for him to claim his discharge at the expiration of three months after he has given notice to the officer in charge of the Police Force at the place at which he is stationed of his wish to be discharged.

Re-engagement after discharge.

(4) If any African subordinate officer offers to re-engage for service within three months after having received his discharge he shall, if the Commissioner approves of his re-engagement, be entitled to the rank or grade which he held at the date of his discharge, and the service of an African subordinate officer who has so re-engaged shall be deemed to be continuous for the purposes of pension or gratuity.

If, however, any such subordinate officer is permitted to re-engage for service after the expiration of three months from the date of his discharge then it shall be discretionary with the Commissioner, subject to the approval of the Governor, to allow the previous service, or part of such service, of such officer to count for the purposes of pension or gratuity, and the question of the reinstatement of such officer in the rank or grade which he held at the date of his discharge shall rest with the Commissioner.

(5) If any Asiatic non-commissioned officer or any subordinate officer who has served as a non-commissioned officer or constable in the similarly constituted police service of the Uganda Protectorate or the Nyasaland Protectorate or the Tanganyika Territory is enlisted in the Police Force within three months after having received his discharge from the appropriate authority he shall be entitled for the purposes of gratuity but not of pension to count his period of service in such Protectorate or Territory as if it had been service in the Police Force.

Exemption from hut or poll tax after nine years' service.

21. Subject to the approval of the Governor on the recommendation of the Commissioner, every African subordinate officer shall, after nine years' continuous good service, be exempt from payment of poll tax in respect of himself for his life or, alternatively, he shall be exempt from the payment of hut tax in respect of one hut for his life : Provided that the exemption conferred by this section shall not be granted to any African subordinate officer enlisted after the 31st day of March, 1931.

Police officer not to resign without permission.

22. No non-commissioned or subordinate officer shall be at liberty to resign from the Police Force unless expressly permitted to do so by the Commissioner or by some other officer authorised to grant such permission.

Prolongation of service in case of war, etc.

23. Any police officer whose period of service expires during a state of war, insurrection or hostilities may be retained and his service prolonged for such further period, not exceeding twelve months, as the Governor may direct.

Discharge of European constables and subordinate officers.

24. (1) Any European constable may be discharged by the Commissioner at any time :—

(*a*) Without pension or gratuity :—

(i) If the Commissioner shall consider that he is unlikely to become an efficient constable ;

(ii) If he has not completed twenty-four months' continuous residential service and is pronounced by a Government medical officer to be mentally or physically unfit for further service;

(iii) On purchase of his discharge, with the approval of the Commissioner at the following rates :—

£75 during the first year of service;

£50 during the second year of service;

£35 during the third year of service :

Provided that if at the date of the purchase of discharge such European constable has not completed twenty months' continuous residential service he shall refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing him to the Colony, including the amount of salary drawn in respect of return leave granted during his preceding leave, together with any salary drawn by him in respect of the voyage from England or elsewhere;

(iv) If he has been sentenced to be dismissed from the Police Force for misconduct.

(*b*) With pension or gratuity according to length of service in accordance with the provisions of the European Officers' Pensions Ordinance, 1927 :— No. 11 of 1927.

(i) If the Commissioner shall consider that he has ceased to be an efficient constable;

(ii) If he has completed twenty-four months' continuous residential service and is pronounced by a Government medical officer to be mentally or physically unfit, not through his own misconduct, for further service;

(iii) On reduction of establishment.

(2) Any Asiatic non-commissioned officer or any subordinate officer may be discharged by the Commissioner at any time :—

(i) If the Commissioner shall consider that he is unlikely to become or has ceased to be an efficient police officer;

(ii) If he is pronounced by a Government medical officer to be mentally or physically unfit for further service;

(iii) On purchase of his discharge, with the approval of the Commissioner, at the following rates :—

In the case of an

Asiatic	African	
£6/0/0	£4/0/0	during the first year of service;
£4/10/0	£3/0/0	during the second year of service;
£3/0/0	£2/0/0	during the third or any subsequent year of service :

Provided that if at the date of the purchase of discharge such Asiatic non-commissioned officer or subordinate officer has not completed the period of service for which he was first enlisted he shall refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing him to the Colony;

(iv) If he has been sentenced to be dismissed from the Police Force for misconduct;

(v) On reduction of establishment.

Rules for reckoning service for purposes of discharge of European constables Asiatic non-commissioned and subordinate officers.

25. In reckoning the service of any European constable or Asiatic non-commissioned officer or any subordinate officer for purposes of discharge there shall in all cases be excluded therefrom all periods during which such constable or officer has been absent from duty for any of the following reasons :—

(*a*) Imprisonment for any cause save that of detention awaiting any trial which results in the acquittal or discharge of the prisoner;

(*b*) Desertion;

(*c*) Absence without leave exceeding forty-eight hours.

Discharge on completion of service.

26. Subject to the provisions of sections 20 and 23 any Asiatic non-commissioned officer or any subordinate officer who has completed his period or periods of service in accordance with the provisions of this Ordinance shall be discharged by the officer in charge of the Police Force at the headquarters of the district in which such Asiatic non-commissioned officer or any subordinate officer is stationed, unless at the date of such completion of service he is undergoing punishment for, or stands charged with, the commission of any offence, in which case his service shall be prolonged and his discharge deferred until such punishment shall have terminated or until he has

undergone his trial and any punishment which may be awarded in respect of the offence with which he has been charged, as the case may be.

Arms, accoutrements, etc., to be delivered up by non-commissioned and subordinate officers on ceasing to belong to the Force.

27. (1) When any non-commissioned or subordinate officer ceases to belong to the Police Force he shall forthwith deliver up to the person appointed by the Commissioner for that purpose or to the officer in charge of the Police Force at the place at which he was last stationed all arms, ammunition, accoutrements, uniform and other appointments which have been supplied to him and which are the property of the Government.

(2) Any non-commissioned or subordinate officer who, having ceased to belong to the Police Force, fails to deliver up any arms, ammunition, accoutrements, uniform or other appointments as required by this section shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment; and it shall be lawful for any court to issue a warrant to search for and seize all such arms, ammunition, accoutrements, uniform and other appointments which shall not have been so delivered up.

POWERS, DUTIES AND PRIVILEGES OF POLICE OFFICERS.

Power and duties of police officers.

28. (1) Every police officer shall exercise such powers and perform such duties as are by law conferred or imposed upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Police Force.

(2) It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for any police officer, for any of the purposes mentioned in this sub-section, without a warrant to enter any premises licensed under the Liquor Ordinance or the Native Liquor Ordinance, 1930, or any place in which he has reasonable grounds to suspect that illegal drinking and gaming is taking place or loose and disorderly characters are resorting.

Cap. 71.
No. 36 of 1930.

Power of police officer to lay informations, etc.

29. It shall be lawful for any police officer to lay any information before a magistrate and to apply for a summons, warrant, search warrant or such other legal process as may by law issue against any person.

No fee to be chargeable on bail bonds, etc., taken by Police.

30. Notwithstanding anything to the contrary contained in any Ordinance, rule or other enactment, no fee or duty shall be chargeable upon bail bonds in criminal cases, recognizances to prosecute or give evidence, or recognizances for personal appearance or otherwise issued or taken by a police officer.

Power of police officers to inspect licences.

31. (1) It shall be lawful for any police officer to stop and detain any person whom he sees or suspects of doing any act or thing or being in possession of anything for which a licence is required under the provisions of any enactment for the time being in force, and to require such person to produce his licence.

(2) Any person who fails to produce such licence when called upon by a police officer may be arrested without a warrant unless he gives his name and address and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

Duty of Police Force to keep order on public roads, etc.

32. (1) It shall be the duty of the Police Force to regulate and control traffic and to keep order on public roads, streets, thoroughfares and landing places and at other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare or landing place may be thronged or may be liable to be obstructed.

(2) Every person who opposes or disobeys any lawful order given by any police officer under this section shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(3) Any person who opposes or disobeys any lawful order given by a police officer under this section may be arrested without a warrant unless he gives his name and address and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

Power to regulate assemblies and processions, etc.

33. (1) Any commissioned officer or any inspector in charge of the Police Force in any place or any administrative officer in any place where there is no commissioned officer or inspector in charge may—

(*a*) regulate the extent to which music may be used on public roads or streets or at places of public resort on the occasions of festivals or ceremonies;

(*b*) direct the conduct of all assemblies and processions on public roads or streets or at places of public resort, and may prescribe the route by which and the times at which any procession may pass.

(2) Any person who is desirous of convening or collecting any assembly or of forming any procession on any public road or street or at any place of public resort shall first make application for a licence to a commissioned officer or to an inspector in charge of the Police Force in the place or to an administrative officer where there is no commissioned officer or inspector in charge in such place, and if such commissioned officer, inspector, or administrative officer, as the case may be, is satisfied that the assembly or procession is not likely to cause a breach of the peace a licence shall issue specifying the name of the licensee and defining the conditions upon which the assembly or procession is permitted to take place.

(3) Any magistrate, or any commissioned officer, inspector or administrative officer as aforesaid, may stop any procession for which no licence has been issued or which violates any of the conditions of a licence issued under this section, and may order it or any assembly which has been prohibited or which violates any such conditions as aforesaid to disperse.

Unlawful assemblies.

34. Any assembly or procession which—

(*a*) takes place without a licence issued under the last preceding section; or

(*b*) neglects to obey any order given under sub-section (3) of the last preceding section,

shall be deemed to be an unlawful assembly, and all persons taking part in such assembly or procession, and in the case of an assembly or procession for which no licence has been issued all persons taking part in the convening, collecting or directing of the assembly or procession, shall be liable to imprisonment for a period not exceeding one year.

Penalty for disobeying orders or violating conditions of a licence under section 33.

35. Any person who—

(*a*) opposes or disobeys any order issued under sub-section (1) of section 33; or

(*b*) violates any condition of a licence issued under section 33,

shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Disposal of unclaimed property.

36. (1) It shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory or description thereof to a magistrate.

(2) The magistrate shall detain or give orders for the detention of any such property and shall cause a notice to be posted in a conspicuous place at his court and at the police stations of his district specifying such property and calling upon any person who may have any claim thereto to appear and establish his claim within six months from the date of such notice :

Provided that if such property is subject to speedy and natural decay, or if the magistrate is of opinion that its immediate sale would be for the benefit of the owner, the magistrate may at any time direct it to be sold.

(3) Such property, if no person shall within six months from the date of the notice aforesaid establish his claim thereto, may be sold by order of the magistrate.

(4) The proceeds of the sale of such property shall, if no claim to it has been established within the period aforementioned, be apportioned in the following manner :—

(*a*) One-half shall be paid to the credit of the Police Rewards and Fines Fund;

(*b*) Such proportion of the remaining one-half as the magistrate may direct shall be paid to the finder of the property;

(*c*) The balance shall be paid to the Treasurer for the use of the Colony.

Power to take finger-prints of all persons in lawful custody.

37. (1) It shall be lawful for any police officer to take and record for the purpose of identification the finger prints of all persons who may from time to time be in lawful custody : Provided that if the finger prints are taken by a police officer below the rank of assistant sub-inspector such

finger prints shall be taken in the presence of a magistrate or a justice of the peace or a police officer of or above the rank of assistant sub-inspector.

(2) Any person in lawful custody who shall refuse to submit in a proper manner to the method of identification aforesaid shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Non-liability for act done under authority of a warrant.

38. If any action shall be commenced or prosecution instituted against any police officer in respect of any act done in obedience to a warrant purporting to have been issued by a magistrate or justice of the peace, such police officer shall not be responsible for any irregularity in the issuing of the warrant or for any want of jurisdiction in the magistrate or justice of the peace issuing the same; and upon producing the warrant containing the signature of the magistrate or justice of the peace, and upon proof that the act or acts complained of was or were done in obedience to such warrant, judgment shall be given in favour of such police officer :

Provided that no proof of the signature of the magistrate or justice of the peace shall be required unless the court shall have reason to doubt the genuineness of the signature.

Notice of action or prosecution.

39. No action shall be commenced or prosecution instituted against any police officer in respect of anything done or purporting to have been done by him under the provisions of this Ordinance or under the general police powers hereby given unless notice in writing of such action or prosecution and of the cause thereof shall have been given to the defendant, and to the officer in charge of the Police Force in the place where the act was committed, at least one month before the commencement of the action or the institution of the prosecution :

Provided that no action shall in any case lie where the police officer has been prosecuted criminally and convicted in respect of the same act.

Salary of certain police officers not to be attached for money borrowed or goods supplied.

40. No salary or other allowance paid to a European constable or any non-commissioned officer of or below the rank of chief sub-inspector or any subordinate officer shall be liable to be attached, sequestered or levied upon for or in respect of any debt or claim for any money borrowed by him

or any goods supplied to him or to any person on his behalf while such European constable, non-commissioned officer or subordinate officer is a member of the Police Force.

DISCIPLINE.

41. Any non-commissioned or subordinate officer or follower who— **Offences against discipline.**

(1) begins, excites, causes or joins in any mutiny or sedition amongst the Police Force, or does not use his utmost endeavours to suppress such mutiny or sedition, or conspires with any other person to cause any mutiny or sedition, or being cognisant of any mutiny or sedition, or intended mutiny or sedition, does not without delay give information thereof to his superior officer; or

(2) persuades or endeavours to persuade, procures or attempts to procure, or assists any police officer to desert, or being cognisant of any such desertion or intended desertion does not without delay give information thereof to his superior officer; or

(3) uses traitorous or disloyal words regarding His Majesty; or

(4) is disrespectful in word, act or demeanour to his superior officer; or

(5) wilfully disobeys any lawful command; or

(6) is guilty of drunkenness; or

(7) drinks intoxicating liquor when on duty; or

(8) absents himself without leave; or

(9) is found sleeping at his post, or leaves his post before he is regularly relieved except in fresh pursuit of any offender whom it is his duty to apprehend; or

(10) being under arrest or in confinement leaves or escapes from his arrest or confinement before he is set at liberty by proper authority; or

(11) neglects or refuses to assist in the apprehension of any police officer charged with any offence when lawfully ordered so to assist; or

(12) allows to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard; or

(13) offers unwarrantable personal violence to any person in his custody; or

(14) is guilty of cowardice; or

(15) discharges his rifle without orders or just cause; or

(16) without reasonable cause fails to appear at any parade appointed by his superior officer; or

(17) pawns, sells, loses by neglect, makes away with, wilfully damages or fails to report any damage to any arm, ammunition, accoutrement, uniform or other appointment supplied to him or any Government property committed to his charge; or

(18) steals any money or goods the property of any police officer or steals or embezzles any Government money or goods, or receives any such money or goods knowing the same to have been stolen or embezzled from any police officer or from the Government; or

(19) commits any act of plunder or wanton destruction of property; or

(20) accepts or solicits a bribe or gratuity; or

(21) is slovenly, inattentive, uncivil or quarrelsome; or

(22) fails to keep his rifle clean; or

(23) without due authority discloses or conveys any information concerning any investigation or other police or departmental matter; or

(24) malingers, or feigns or produces any disease or infirmity; or

(25) is wilfully guilty of misconduct, or wilfully disobeys, whether in hospital or elsewhere, any orders, by which misconduct or disobedience he produces or aggravates any disease or infirmity or delays its cure; or

(26) incurs debt in or out of the Police Force; or

(27) without proper authority exacts from any person, carriage, porterage or provisions; or

(28) resists an escort whose duty it is to apprehend him or to have him in charge; or

(29) breaks out of police lines, camp or quarters; or

(30) makes any false statement upon joining the Police Force; or

(31) refuses or neglects to make or send a report or return which it is his duty to make or send; or

(32) makes a false accusation against any police officer knowing such accusation to be false; or

(33) in making a complaint against any police officer makes a false statement affecting the character of such officer knowing such statement to be false or knowingly and wilfully suppresses any material facts; or

(34) engages without authority in any employment or office other than his police duties; or

(35) becomes security for any person or engages in any loan transaction with any police officer without the permission in writing of the Commissioner; or

(36) if called upon by a commissioned officer to furnish a full and true statement of his financial position fails to do so; or

(37) is guilty of any act, conduct, disorder or neglect which is declared by regulations made under this Ordinance to be an offence against duty or discipline; or

(38) is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline, not hereinbefore specified,

shall be deemed to have committed an offence against discipline, and shall suffer such punishment, according to the degree and nature of the offence, as may be awarded in accordance with section 42 of this Ordinance.

A commissioned officer or an inspector may arrest or order the arrest of any police officer (not being an officer of his own or of a superior rank), or any follower who is accused of an offence under this section, and any police officer may, on receipt of any such order as aforesaid, apprehend such accused person without a warrant and shall forthwith bring him before a commissioned officer or an inspector.

Punishments which may be awarded.

42. (1) A commissioned officer or an inspector in charge of the Police Force in any place or an administrative officer in any place where there is no commissioned officer or inspector in charge may enquire into the truth of any charge under the last preceding section, and, if his decision is against the accused, he may impose on him any one or more of the following punishments :—

(i) In the case of inspectors :—

Reprimand;

(ii) In the case of other non-commissioned officers :—
- (*a*) Reprimand;
- (*b*) Fine not exceeding one hundred and fifty shillings;

(iii) In the case of subordinate officers :—
- (*a*) Reprimand;
- (*b*) Confinement for a period not exceeding fifteen days with or without punishment drill, extra guards, fatigues or other duty;
- (*c*) Fine not exceeding one hundred and fifty shillings;
- (*d*) Reduction in rank or grade.

(iv) In the case of followers :—
- (*a*) Reprimand;
- (*b*) Fine not exceeding one hundred shillings;
- (*c*) Stoppage of increment;
- (*d*) Dismissal.

Every sentence passed under this sub-section involving a reprimand on a non-commissioned officer or the imposition of a fine or reduction in rank or grade shall, before being carried into execution, be reported to the Commissioner who may confirm or vary any such sentence : Provided that the Commissioner shall not increase any such sentence without giving the accused an opportunity of being heard.

Special powers of Commissioner.

(2) The Commissioner may, in respect of any conviction made by himself upon investigating any charge under section 41 or in respect of any conviction reported to him under sub-section (1) of this section, impose any one or more of the following punishments :—

(i) In the case of any non-commissioned officer :—
- (*a*) Fine not exceeding two hundred shillings;
- (*b*) Stoppage of increment;
- (*c*) Reduction in rank or grade;
- (*d*) Dismissal.

(ii) In the case of any subordinate officer :—
- (*a*) Forfeiture of all pay which may be due to him;
- (*b*) Forfeiture of any reward which he may have earned in the Police Force;
- (*c*) Forfeiture of any advantage in regard to gratuity on discharge which he may have earned by past service;
- (*d*) Dismissal :

Provided that any non-commissioned or subordinate officer who has been awarded a punishment under paragraphs (i) (*d*), (ii) (*b*), (ii) (*c*), or (ii) (*d*) of this sub-section and who is dissatisfied with the decision of the Commissioner may within seven days after the decision has been communicated to him appeal to the Governor in Council whose decision shall be final.

(3) An investigation by the Commissioner under sub-section (2) of this section shall be conducted in accordance with Rules made by the Governor in Council.

Interdiction pending enquiry.

43. Any commissioned officer, non-commissioned or subordinate officer may be interdicted from duty at any time by the Commissioner pending an inquiry under Colonial Regulations or this Ordinance, as the case may be, but shall not, by reason of such interdiction, cease to be a police officer :

Provided that the powers, privileges and benefits vested in him as a police officer shall, during his interdiction, be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been interdicted.

Power to summon witnesses.

44. (1) Every police or administrative officer hereinbefore empowered to enquire concerning offences under section 41 shall in any matter touching such enquiries have the power of summoning and examining witnesses on oath or affirmation and calling for documents in any matter before him and of adjourning any hearing from time to time. In all cases which under section 42 have to be reported to the Commissioner the proceedings and evidence shall be recorded in writing.

(2) Any person summoned as a witness under the preceding sub-section who fails to attend at the time and place mentioned in the summons, or having attended refuses to answer all questions that may be lawfully put to him, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Corporal punishment.

45. (1) Any African subordinate officer or follower who—

(*a*) strikes, or uses or offers any violence against his superior officer, or uses threatening or insubordinate language to his superior officer ; or

(*b*) wilfully disobeys any lawful command ; or

(*c*) malingers, or feigns or produces any disease or infirmity ; or

(*d*) resists an escort whose duty it is to apprehend him or to have him in charge; or

(*e*) is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline; or

(*f*) having been previously convicted of any offence under section 41, is convicted of any further offence under the said section,

may, in addition to or in lieu of any other punishment to which he may be liable, be sentenced to undergo corporal punishment not exceeding fifteen lashes, to be inflicted only as prescribed by this section :

(2) No sentence of corporal punishment shall be imposed by an officer other than a commissioned officer, and every such sentence shall be reported to the Commissioner :

(3) A sentence of corporal punishment shall not be carried out except in the presence of a Government medical officer or, in case no medical officer is available, of a magistrate or commissioned officer, and such medical officer, magistrate, or commissioned officer, as the case may be, shall first satisfy himself and shall certify in writing as to the physical fitness of the offender to undergo the sentence. The medical officer, magistrate or commissioned officer, as the case may be, shall give such orders as he may deem necessary for preventing injury to the health of the offender and all such orders shall be immediately obeyed. In case the said medical officer or magistrate or commissioned officer as the case may be shall order the punishment to be discontinued it shall be discontinued immediately.

(4) No sentence of corporal punishment shall be carried out except with an instrument approved by the Governor.

Power to suspend punishment.

46. (1) Subject to the provisions of this section any sentence imposed under section 42 may be suspended by order of the officer imposing the sentence or of the Commissioner for such period (in this section referred to as " the period of suspension "), not exceeding six months, as such officer or the Commissioner, as the case may be, may determine.

(2) Where any sentence has been suspended under this section the officer who ordered such suspension or such other officer as may be directed by the Commissioner shall, at the expiration of the period of suspension, review the case, taking

into consideration such reports upon the conduct of the accused during the period of suspension as shall be available. Such officer may thereupon order the sentence to be remitted or reduced, in which case he shall cause any entry relating to the offence which has been made in the records of the accused to be expunged or altered, as the case may be, or he may order the sentence to be forthwith carried into execution :

Provided that if, during the period of suspension, the accused is convicted of a further offence under section 41 the suspended sentence shall forthwith be carried into execution, and if sentences of confinement have been imposed in respect of both offences such sentences shall run consecutively :

Provided further that if, during the period of suspension, the accused is convicted of a further offence as aforesaid the second sentence shall not be suspended.

Procedure in case of grave or repeated offences.

47. (1) In every case where it shall appear to the officer investigating any charge under sub-section (1) of section 42 that the offence which the accused has committed would, by reason of its gravity or by reason of previous offences or for any other reason, not be adequately punished with any of the punishments in that sub-section provided, such officer shall defer passing sentence and shall report the proceedings to the Commissioner. The Commissioner may return the report for such further enquiry as he may deem necessary, or he may re-hear the case, or he may order the accused to be taken before a magistrate to be dealt with under the next succeeding sub-section.

(2) Where an accused person is taken before a magistrate under this section he shall be liable on conviction to a fine not exceeding three months' pay or to imprisonment for a period not exceeding six months or to both such fine and imprisonment :

Provided that no proceedings shall be taken against any police officer under this section in respect of any offence for which he has already been punished under any of the preceding sections.

Dismissal and reduction in rank of non-commissioned and subordinate officers sentenced to imprisonment.

48. The Commissioner may reduce in rank or grade or may dismiss from the Police Force any non-commissioned or subordinate officer who has been sentenced to imprisonment by any court in respect of any offence, whether under this Ordinance or otherwise :

Provided that the dismissal of a non-commissioned officer, other than a European constable, under this section shall be subject to the approval of the Governor.

Fines to be recovered by stoppage from pay.

49. (1) All fines imposed by a police or administrative officer in respect of offences under this Ordinance or any regulations made thereunder shall be recovered by stoppage from the offender's pay due at the time of committing such offence and thereafter accruing due.

(2) The amount of stoppage in respect of any fine shall be in the discretion of the officer authorised to impose such fine, but shall in no case exceed one-half of the pay of the offender; and whenever more than one order of stoppage is in force against the same person so much only of his pay shall be stopped as shall leave him a residue of at least one-half of his pay.

(3) Where more than one order of stoppage is made upon the same person, the orders later in date shall, if necessary, be postponed as to their enforcement until the earlier orders have been discharged.

Loss or damage to arms, accoutrements, etc., to be made good by stoppage of pay.

50. If any non-commissioned or subordinate officer pawns, sells, loses by neglect, makes away with or wilfully damages any arm, ammunition, accoutrement, uniform or other appointment supplied to him or any Government property committed to his charge he may, in addition to or in lieu of any other punishment, be ordered to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his pay.

Pay not to accrue during absence without leave, imprisonment, or detention.

51. No pay shall accrue to any non-commissioned or subordinate officer in respect of any period during which he is absent from duty without leave, or is undergoing any sentence of imprisonment, or is under interdiction awaiting any trial which results in his conviction, either for any offence against discipline or for any other offence of whatever nature.

Provided that in any case the Commissioner may in his discretion authorise the payment of such proportion of salary, not being less than one-half, as he shall think fit.

Place of confinement of offenders under this Ordinance.

52. All police officers who are arrested for any offence under this Ordinance, and all offenders sentenced to confinement by a police or administrative officer under this Ordinance, shall be confined in any building set apart as a guardroom or cell.

POLICE REWARDS AND FINES FUND.

Establishment of Police Rewards and Fines Fund.

53. (1) All fines imposed by a police or administrative officer upon a member of the Police Force under the provisions of this Ordinance or any regulations made thereunder shall be paid to the Treasurer to be placed to the credit of a fund to be called the " Police Rewards and Fines Fund."

(2) No payment shall be made from the Police Rewards and Fines Fund except upon the authority of the Commissioner.

(3) The Commissioner may sanction payments from the Police Rewards and Fines Fund for any of the following purposes :—

(*a*) Assistance to the wives or families of deceased non-commissioned or subordinate officers, or to non-commissioned or subordinate officers discharged from the Police Force as medically unfit for further service, at the discretion of the Commisioner;

(*b*) Contributions towards prizes to be given at athletic meetings, assaults-at-arms and similar events organized by or for the benefit of the Police Force;

(*c*) Purchase of ammunition for the encouragement of range practice among the members of the Police Force;

(*d*) Payments to non-commissioned or subordinate officers as rewards for meritorious acts or service in the execution of duty, if such payments are not met from Colonial funds;

(*e*) Expenditure for the benefit and advancement of authorised recreation and sport and other branches of police activity organised within the Police Force.

(4) Annual estimates of revenue and expenditure on account of the Police Rewards and Fines Fund shall be framed by the Commissioner and shall be submitted to the Treasurer in sufficient time to admit of their consideration before the commencement of the year to which they relate.

Rewards to police officers to be paid to Police Rewards and Fines Fund.

54. All rewards, forfeitures and penalties which by law are payable to informers, when the information is laid by a police officer, and all sums under sub-section 4 (*b*) of section 36 directed to be paid to the finder of unclaimed property where such finder is a police officer, shall be paid into the Police Rewards and Fines Fund.

PENSIONS AND GRATUITIES.

Pensions and gratuities.

No. 11 of 1927.

55. (1) European police officers shall be eligible for pensions or gratuities in accordance with the provisions of the European Officers' Pensions Ordinance, 1927.

(2) Asiatic police officers shall be eligible for pensions or gratuities in accordance with the regulations for the time being in force for other Asiatic officials.

(3) African subordinate officers shall be eligible for pensions or gratuities in accordance with regulations made under this Ordinance.

Power to make regulations for granting of pensions or gratuities to Africans.

56. (1) It shall be lawful for the Governor in Council, with the sanction of the Secretary of State, from time to time to make, and when made to vary and revoke regulations for the granting of pensions or gratuities to African subordinate officers.

(2) Every such regulation when made shall be laid before the Legislative Council and shall be published in the Gazette.

(3) No such regulation shall provide for the payment of a gratuity to any such officer who has not completed twelve years' continuous service nor shall any such officer be eligible in any case for a gratuity a sum exceeding thirty pounds.

(4) No such regulation shall provide for the grant of a pension to any such officer who has not completed sixteen years' continuous service, and no pension shall in any case exceed half the maximum salary drawn by any such officer at any time.

WILLS AND DISTRIBUTION OF PROPERTY.

Provisions for disposal of personal property of non-commissioned or subordinate officer dying intestate.

57. (1) Every constable on enlistment shall declare the name or names of the person or persons to whom, in the event of his death without having made a valid will, any monies or personal property should be paid or delivered, and the name or names of such person or persons shall be recorded at the headquarters of the Police Force. The records shall be verified periodically and it shall be the duty of every police officer to report any alteration in the records which he may desire to be made.

(2) Any commissioned officer or any officer of any public department having in his charge or control any pay, gratuity, allowance or other monies or any personal property belonging to any non-commissioned or subordinate officer who has died

intestate having complied with the requirements aforesaid may pay or deliver the same to the person or persons whose name or names has or have been recorded by such officer in the manner prescribed.

Form of will of non-commissioned and subordinate officers.

58. (1) Any will made by a non-commissioned or subordinate officer shall be valid for disposing of any monies or personal property which shall be belonging to or due to him at his death if—

(*a*) it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by, one witness, being a commissioned officer or magistrate; or

(*b*) it is executed with the formalities required by any enactment for the time being in force in the case of persons not being police officers.

Any such will shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to the monies or personal property thereby bequeathed.

Personal property, if not exceeding £100 may be handed over without probate or administration.

(2) Any commissioned officer or any officer of any public department having in his charge or control any pay, gratuity, allowance or other monies or any personal property belonging to such testator, not exceeding in the aggregate the value of one hundred pounds, may pay or deliver the same to any person entitled thereto under the will or to the person entitled to procure probate of or administration under such will, although probate or administration may not have been taken out.

Probate or administration to be taken out if property exceeds £100 in value.

(3) If the value of the said monies and personal property exceeds the sum of one hundred pounds, the officer having the same in his charge or control shall require probate or administration to be taken out and shall thereupon pay or deliver such monies and personal property to the legal representative of the deceased.

Distribution of property in case of intestacy of deceased non-commissioned or subordinate officer.

59. In case any non-commissioned or subordinate officer shall die without having complied with the requirements prescribed by section 57 or without having made any valid will under this Ordinance or any enactment for the time being in force relating to wills, any commissioned officer or any officer of any public department having in his charge or

control any monies or personal property of the deceased may, with the concurrence of the Governor, pay or deliver such monies or personal property to any person who is proved to the satisfaction of the Governor to be the widow or the child or any near relative of the deceased according to the rules of kinship of the tribe to which the deceased belonged; and where there are more claimants than one then such monies or personal property shall be paid or delivered in such shares and proportions as the claimants would be entitled to receive under the rules of succession prevailing among such tribe, or as nearly as may be.

Provision for payment of debts of non-commissioned or subordinate officers.

60. Notwithstanding anything hereinbefore contained, if in any case where probate of the will or administration to the estate of the deceased has not been taken out, any commissioned officer or any officer of any public department having in his charge or control any monies or other personal property belonging to the deceased shall, before disposing of such monies or personal property in the manner aforesaid, have notice of any debt due by the deceased, he shall apply such monies and personal property in his charge or control, or so much thereof as may be requisite, in or towards the payment of such debt, subject to the following conditions :—

(1) That the debt has accrued within three years before death;

(2) That payment of the debt is claimed within one year after death; and

(3) That the debt is proved to the satisfaction of the Governor.

Property distributed under this Ordinance subject to rights of creditors.

61. In all cases where the monies or other personal property of the deceased, or any part thereof, shall have been paid or delivered to any person under the provisions of sections 56 (2), 57 (2) or 58, any creditor of the deceased shall have the same rights and remedies against such person as if such person had received the same as the legal personal representative of the deceased.

Monies and property not distributed to be paid into Police Rewards and Fines Fund.

62. If any monies or other personal property of the deceased, not exceeding the value of one hundred pounds, shall remain undisposed of or unappropriated at the expiration of one year from the date of the death, the officer having the charge or control thereof shall apply and make over the same to the Police Rewards and Fines Fund :

Provided that the application of such monies or personal property as aforesaid shall not be deemed to bar the claim of any person to the same or any part thereof which may be established at any time after such application.

Medals, decorations, etc., not to be included in estate of deceased non-commissioned or subordinate officer.

63. Medals and decorations shall not be included in the personal property of any deceased non-commissioned or subordinate officer but the same shall be delivered to the Commissioner and shall be disposed of in accordance with regulations made under this Ordinance.

PROVISIONS FOR ADDITIONAL OR SPECIAL POLICE OFFICERS.

Employment of additional police officers at expense of private persons.

64. The Commissioner may, subject to the direction of the Governor, on the application of any person and on being satisfied as to the necessity therefor, depute any additional number of police officers for special duty at any place in the Colony and for such period as he may consider necessary. Such police officers shall, subject to the provisions of this Ordinance, be exclusively under the orders of the officer in charge of the Police Force in such place and shall, unless the Governor otherwise directs, be employed at the expense of the person making the application :

Provided that any person on whose application additional police officers have been deputed for special duty at any place may, on giving one month's notice to the Commissioner, require that such additional police officers shall be withdrawn from such place; and at the expiration of one month from the date of such notice such person shall be relieved of any further expense in connection with the employment of such additional police officers.

Employment of additional police officers in connection with certain works.

65. Where any railway, canal or other public work, or any manufactory or commercial concern, is being carried on or is in operation in any place in the Colony, and it shall appear to the Commissioner that the employment of an additional number of police officers in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour, of the persons employed upon such work, manufactory or concern, the Commissioner may, subject to the directions of the Governor, depute any additional number of police officers for special duty at such place and for such period as he may consider necessary and make orders upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern for the pay-

ment of such additional police officers, and such person shall thereupon cause payment to be made accordingly: Provided that any person on whom such order for payment has been made may appeal against such order to the Governor in Council.

Employment of additional police officers in disturbed or dangerous districts.

66. (1) The Governor may, by proclamation published in the Gazette and in such other manner as the Governor may direct, declare that any area in the Colony has been found to be in a disturbed or dangerous state, or that, by reason of the conduct of the inhabitants of such area or any class or section of such inhabitants, it is expedient to increase the number of police officers stationed in such area.

(2) Upon publication of a proclamation under sub-section (1) the Commissioner may, subject to the directions of the Governor, employ any number of police officers in addition to the usual complement to be stationed in the area specified in such proclamation, and, subject to the provisions of the next succeeding sub-section, the cost of such additional police officers shall be borne by the inhabitants of such area.

(3) A magistrate, after such enquiry as he may consider necessary, shall, subject to the directions of the Governor, apportion the cost of such additional police officers among the inhabitants of such area, and such apportionment shall be made according to the magistrate's judgment of the respective means of such inhabitants:

Provided that the magistrate may, subject to the directions of the Governor, exempt any persons or any class or section of such inhabitants from liability to bear any portion of such cost.

(4) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but such proclamation may at any time be withdrawn or may be continued from time to time for such further period or periods as the Governor may in each case direct.

Award of compensation to sufferers from misconduct of inhabitants of proclaimed area.

67. (1) If in any area in regard to which any proclamation under the last preceding section is in force, death or grievous hurt or loss of or damage to property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of such inhabitants, any person

who claims to have suffered injury from such misconduct may, within one month after the date of the injury, make an application for compensation to the magistrate of the district within which such area is situated.

(2) Upon any such claim being made the magistrate may, subject to the directions of the Governor, after such enquiry as he may consider necessary, and whether any additional police officers have or have not been stationed in such area under the last preceding section—

(*a*) declare the person or persons to whom injury has been caused by or has ensued from such misconduct;

(*b*) assess the amount of compensation to be paid to such person or persons and the manner in which it is to be distributed;

(*c*) assess the proportions in which such compensation shall be paid by the inhabitants in such area:

Provided that the magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury:

Provided also that the magistrate may, subject to the directions of the Governor, exempt any persons or any class or section of such inhabitants from liability to pay any portion of such compensation.

(3) Every declaration or assessment made or exemption granted under the last preceding sub-section shall be subject to revision by the Governor, but, save as aforesaid, shall be final.

(4) No civil suit shall be maintainable in respect of any injury for which compensation has been accepted under this section.

Definition of "inhabitants."

68. For the purposes of the two last preceding sections the term "inhabitants" includes all persons who themselves or by their agents or servants occupy or hold land or other immovable property within the area specified in the proclamation and all landholders who themselves or by their agents or servants collect rents direct from lessees or occupiers in such area, notwithstanding that they do not actually reside in such area.

Recovery and disposal of monies paid under sections 64, 65, 66, and 67.

69. (1) All monies payable under sections 64, 65, 66 and 67 shall be recoverable by a magistrate in the manner provided by law for the recovery of fines imposed in criminal proceedings or by suit in any competent court.

(2) All monies recovered under sections 64, 65 and 66 shall be paid to the Treasurer for the use of the Colony :

Provided that the Governor may, on the recommendation of the Commissioner, direct that one-third of any monies recovered under section 64 shall be paid into a fund which shall be called the " Barrack Fund " and shall be under the control of the Commissioner and shall be disposed of in accordance with regulations and that an additional one-third of such monies shall be paid proportionately to the additional police officers employed.

(3) All monies recovered under section 67 shall be paid by the magistrate to the persons to whom and in the proportions in which the same are payable.

Power to appoint special constables.

70. (1) Whenever it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place or may reasonably be apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred or is apprehended, any magistrate or justice of the peace may, on the application of a commissioned officer or an administrative officer in charge of police, appoint residents of the neighbourhood to act as special constables, in such manner, for such period, and within such limits as he may consider necessary :

Provided that whenever special constables shall have been appointed under this section the magistrate or justice of the peace making the appointment shall forthwith transmit to the Governor notice of such appointment and of the circumstances which rendered such appointment expedient.

(2) All persons who are exempt from liability to serve as jurors shall be exempt from service as special constables.

(3) All persons serving as special constables shall be entitled during their period of service to remuneration at the same rate as shall for the time being be paid to European constables.

(4) Every special constable so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as police officers.

(5) If any person who is appointed a special constable as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, on conviction before a magistrate, to a fine not exceeding five pounds for every such neglect, refusal or disobedience.

GENERAL OFFENCES.

Power to prosecute under other law not to be affected by this Ordinance.

71. Nothing in this Ordinance shall be construed to exempt any police officer or other person from being proceeded against under any other Ordinance or law in respect of any offence made punishable by this Ordinance, or from being liable under any other Ordinance or law to any other or higher penalty or punishment than is provided for such offence by this Ordinance :

Provided that no person shall be punished twice for the same offence.

Inducing or aiding police officers to desert.

72. Any person who by any means directly or indirectly procures or persuades, or attempts to procure or persuade, any non-commissioned or subordinate officer to desert, or who aids, abets or is accessory to the desertion of any non-commissioned or subordinate officer, or who, having reason to believe that any person is a deserter from the Police Force, harbours such person or aids him in concealing himself or assists in his rescue, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Apprehension of deserters.

73. Upon reasonable suspicion that any person is a deserter from the Police Force, any police officer may apprehend him without a warrant. Such person shall forthwith be brought before a magistrate of the district wherein he was found and upon conviction of being a deserter shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Inciting to mutiny or sedition.

74. Any person who aids, abets or is accessory to any mutiny, sedition, or disobedience to any lawful command of a superior officer by any non-commissioned or subordinate officer, or maliciously endeavours to seduce any non-commissioned officer from his allegiance or duty, shall be liable, on conviction before a magistrate, to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Unlawfully harbouring police officers.

75. Any retailer or keeper of any house, store or place for the sale of intoxicating liquor who, by himself or by any person in his employment, knowingly harbours or entertains any non-commissioned or subordinate officer, or permits any such officer to remain in his house, store or other place, during any portion of the time appointed for his being on duty or service, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment:

Provided that for the purposes of this section a non-commissioned or subordinate officer shall not be deemed to be on duty or service unless he shall be on actual duty or on active service.

Unlawful possession of articles supplied to police officers.

76. Any person, not being a police officer, who is found in possession of any article whatsoever which has been supplied to any police officer for the execution of his duty, or any medal or decoration granted to any police officer for service or good conduct, and who fails to account satisfactorily for the possession thereof, or who without due authority purchases or receives any such article, medal or decoration from any police officer, or who aids or abets any police officer to sell or dispose of any such article, medal or decoration, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Offences in public places to the obstruction, annoyance, etc., of residents or passengers.

77. (1) Every person who, on any road, street, thoroughfare or open space within the limits of any township or municipality or within the limits of any place to which this section may be extended by proclamation by the Governor, commits any of the following offences shall be liable on

conviction before a magistrate, to a fine not exceeding five pounds or to imprisonment for a period not exceeding one month, that is to say, every person who :—

(*a*) Slaughters any animal, except such as may have met with an accident or which, for public safety or other reasonable cause, ought to be killed on the spot; **Slaughtering animals.**

(*b*) Cleans any carcass; **Cleaning carcasses.**

(*c*) Rides or drives any animal or vehicle recklessly or furiously; **Furious riding or driving.**

(*d*) Trains or breaks in any animal; **Training animals.**

(*e*) Wantonly or cruelly beats, abuses or tortures any animal; **Cruelty to animals.**

(*f*) Keeps or leaves any animal or vehicle standing longer than is reasonably necessary for loading or unloading or for taking up or setting down passengers; **Obstruction.**

(*g*) Exposes for sale any goods whatsoever so that the same project into or over any footway or beyond the line of the house, shop or building in which the same are exposed; **Exposing goods for sale.**

(*h*) Throws or lays down any dirt, filth or rubbish, or causes or permits any offensive matter to run from any house, factory, dung-heap or the like; **Throwing dirt, etc., into public place.**

(*i*) Is found drunk or riotous and is incapable of taking care of himself; **Being found drunk or riotous.**

(*j*) Wilfully and indecently exposes his person or any offensive deformity or disease, or commits any nuisance; **Indecent exposure.**

(*k*) Bathes or washes in or otherwise pollutes any water-course or furrow, tank or reservoir, not being a place set apart for these purposes; **Pollution of watercourse.**

(*l*) Neglects to fence in or duly to protect any well, tank or other dangerous place or structure; **Protection of dangerous places.**

(*m*) Solicits persons for the purpose of prostitution. **Soliciting.**

(2) It shall be lawful for any police officer to apprehend, without a warrant, and to take into custody any person who, within his view, commits any offence under the last preceding sub-section :

Provided that no person shall be convicted of an offence against paragraphs (*d*), (*f*), (*g*), (*i*) or (*l*) of sub-section (1) of this section unless the magistrate is satisfied that the offence was committed to the obstruction, inconvenience, annoyance or danger of a resident or passenger.

Repeal.

78. The Police Ordinance (Chapter 36 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, and the Identification of Prisoners Ordinance (Chapter 38 of the Revised Edition), are hereby repealed.