



COLONY AND PROTECTORATE OF KENYA

ORDINANCES

ENACTED DURING THE YEAR

1940

VOL. XIX (NEW SERIES)

1941

PRINTED BY THE GOVERNMENT PRINTER
NAIROBI

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ORDINANCES, 1940

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Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1940
<i>Revised Edition</i>			
Cap. 3	Applied Indian Acts	Authorities substituted and necessary modifications	22
" 34	Widows' and Orphans' Pension	Section 4 (1) (g), new; 4 (3), amended	32
" 54	Dangerous Petroleum Tax	Section 3, amended, in force till 31st December following end of war	16
" 57	Stamp	Article 20 of Schedule, addition to	10
24 of 1925	Shop Hours	Sections 3 and 5, amended; 8, repealed and replaced; 18 (5), new; 19, repealed and replaced	36
11 of 1927	European Officers' Pensions	War service to count for pension purposes	21
21 of 1928	Local Government (District Councils)	Section 6 (1) (A), repealed and replaced; 38 (1), amended; 57 (6A), new; 66, amended; 116 (5), new	34
26 of 1928	Traffic	Section 3, amended; paragraph (1) (d) of schedule, new	31
32 of 1929	Cattle Cleansing	Sections 2, 3, 9, 11, 13, 18, amended	13
1 of 1930	Customs Tariff	To be read with No. 1 of 1930, in force till 31st December following end of war	15
36 of 1930	Native Liquor	Section 9 (1), amended; 9A, new; 16 (1), amended	43
39 of 1930	Native Tribunals	Section 13, amended; 18, repealed and replaced; 24, 25, amended; 33 (3), new; 34 and 37, amended	38
2 of 1931	Education	Sections 34 (1) (c), 34 (2), amended; 34A, new; 46 amended	18
3 of 1931	Land and Agricultural Bank	Section 11, repealed and replaced	8
45 of 1931	Kenya Royal Naval Volunteer Reserve	To be read with No. 3 of 1931	14
48 of 1932	King's African Rifles	Section 57, repealed and replaced	44
2 of 1933	Trading in Unwrought Precious Metals	Repealed	2
		Section 89 suspended during continuation in force of Ordinance No. XXVIII of 1940	28
		Section 15, repealed and replaced	25

**TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION
FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1940**

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1940
61 of 1933	Mining	Repealed	29
35 of 1934	Agricultural Mortgage Relief	Section 8 (3), new	9
38 of 1934	District Education Boards	Sections 7 and 8, amended	19
50 of 1936	Non-Native Poll Tax	Repealed	45
2 of 1937	Native Authority	Section 9, amended : 12 (1), repealed and replaced ; 24 (4), new ; 25, amended	20
12 of 1937	Income Tax	Sections 6, 9, 10, 11, and 14, amended, and saving section added	37
28 of 1937	Trade Unions	Repealed, with saving clause	11
2 of 1938	Employment of Servants	Section 3A, B, C, new	1
9 of 1939	Official Secrets	Sections 4, 5, 19, 21, 38, 40, 73 and 77, amended	35
19 of 1939	Sisal Industry	Repealed	7
42 of 1939	War Taxation	Section 2, amended ; 3, 6 (2), 7 (2) and (3), repealed and replaced ; 13 (c) (vi), new ; 16 (2) (a), repealed and replaced	3
4 of 1940	Land and Water Preservation	Section 2, repealed	26
11 of 1940	Income Tax	Section 2, amended ; 3 (1) and 4, repealed and replaced ; schedule, amended	33
14 of 1940	Land and Agricultural Bank (Amendment)	Sections 24, 27, amended ; 28 and 29, deduction of tax from debenture or mortgage interest ; 31, suspended ; Ordinance in force for year following end of war	26
		Sections 2 (1) and 6 (3), amended ; 13, new	30



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, January 30, 1940

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Colony and Protectorate of Kenya

ORDINANCE No. 1 of 1940

Assented to in His Majesty's name this sixteenth day of January, 1940.

HENRY MOORE,
Governor.

[16TH JANUARY, 1940.] Date of assent.

**An Ordinance to Amend the Trade Unions
Ordinance, 1937**

16th January, 1940

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 Trade Unions (Amendment) Ordinance, 1940, and shall be read as one with the Trade Unions Ordinance, 1937, hereinafter referred to as the Principal Ordinance.

Short title.
No. 28 of 1937.

2. The Principal Ordinance is hereby amended by inserting therein, immediately after section 3 thereof, the following new sections:—

Amendment of the Principal Ordinance.

“3A. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working:

Peaceful picketing and prevention of intimidation, etc.

Provided that it shall not be lawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the

purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and any person who acts in contravention of this proviso shall be guilty of an offence against this Ordinance.

(2) In this section the expression "to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property, and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

(3) Notwithstanding anything contained in any Ordinance it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such house or place, and any person who acts in contravention of this sub-section shall be guilty of an offence against this Ordinance.

3B. The expression "trade dispute" for the purposes of section 3A of this Ordinance means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person.

Definition of trade dispute.

3C. The trustees of any trade union registered under this Ordinance, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any suit in any court of law, touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, in any court of law, in their proper names, without other description than the title of their office; and no such suit shall be discontinued

Suits by or against trustees.

1940

Trade Unions

No. 1

or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors, as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the suit had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union."

Replaced by
H.C. Act 6/49

ORDINANCE No. II of 1940

Assented to in His Majesty's name this sixteenth day of January, 1940.

HENRY MOORE,
Governor.

[16TH JANUARY, 1940.] Date of assent.

An Ordinance to Provide for the Establishment of a Volunteer Naval Defence Force

By Order 20th Aug. 1940

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 Kenya Naval Volunteer Ordinance, 1940, and shall come into operation on such date as the Governor may by order, appoint.

Short title and commencement.

S.N. 878/40

2. In this Ordinance unless the context otherwise requires—

Interpretation.

“the Force” means the Kenya Naval Volunteer Force raised under this Ordinance;

“actual service” has the same meaning as in the Royal Naval Reserve Volunteer Act, 1859, as incorporated in the Naval Forces Act, 1903.

22-23 Vic. c. 40
3 Ed. VII, c. 6.

3. It shall be lawful for the Governor to raise and maintain a force of volunteers for the naval defence of the Colony within its territorial waters to be called the Kenya Naval Volunteer Force.

Governor may raise a naval force.

4. The Force shall be raised and maintained at the expense of the Colony out of moneys provided by the Legislative Council.

Force to be maintained at the expense of the Colony.

5. Every member of the Force shall be entered for a term of three years, and shall during such term be subject to the provisions of this Ordinance, and at the expiration of every third year of the period of his service as a volunteer he shall be entitled to claim his discharge:

Period of service.

Provided that if he is then in actual service his right to claim his discharge shall be suspended until the cessation of such service.

6. The Force shall consist of such units as the Governor may by notification in the Gazette appoint.

Force to consist of units.

7. The Force shall consist of such numbers of officers and men as the Governor may from time to time decide. The

Constitution of Force.

officers of the Force shall receive either commissions or warrants from the Governor, and such commissions or warrants shall not be deemed to be vacated by the death or retirement from office of the Governor by whom the same were issued.

Governor may dispense with services.

8. The Governor may at any time dispense with the services of any member of the Force.

Instruction.

9. The Governor may cause any member of the Force to be instructed, trained and exercised on shore or on board any ship or vessel or partly on shore and partly on board any ship or vessel within the limits of the Colony including therein its territorial waters:

Provided that no member of the Force shall under this Ordinance be required to attend instruction, training and exercise more than twenty-eight days in any one year.

Organization, conditions of services, etc., to be prescribed by regulations.

10. The government, organization, administration and training of, and the qualifications for entry into and conditions of service in the Force shall be prescribed by regulations made by the Governor. Such regulations may in particular provide for all or any of the following matters or things —

- (a) the numerical establishments of units of the Force, and the grades, ranks and ratings therein;
- (b) the training and inspection of the Force, the formation of training camps, the establishment of depots or stations of the Force, and the holding of exercises for the Force;
- (c) the attendance at courses of instruction of members of the Force;
- (d) the seniority of officers of the Force, and the appointment to, promotion to and tenure of commissioned or warrant rank in the Force;
- (e) the advancement to or reversion from petty officer rating of men of the Force;
- (f) the conditions as to physical fitness and efficiency on which members of the Force may continue to serve in the Force after completing their first term of service;
- (g) the requisitioning of goods or accommodation in time of war or emergency;
- (h) the calling into actual service of the members of the Force;

- (i) the issue and care of arms, accoutrements, ammunition, supplies, clothing and equipment for members of the Force;
- (j) returns, books, forms and correspondence relating to the Force;
- (k) the establishment and conduct of institutions for providing recreation and refreshment to members of the Force;
- (l) generally for the better carrying out of the provisions of this Ordinance.

11. Any person who wilfully obstructs any portion of the Force or any member thereof in the performance of any service or duty under this Ordinance or regulations made under section 10 of this Ordinance shall be guilty of an offence.

Obstructing the Force.

12. Any person—

- (a) who agrees with, or induces or attempts to induce any member of the Force to neglect or to act in conflict with his duty as a member of the Force; or
- (b) who is a party to, or aids or abets, or incites to the commission of, any act whereby any lawful order given to any member of the Force or any law or regulation with which it is the duty of any member of the Force to comply may be evaded or infringed; or
- (c) who supplies or is a party to supplying any member of the Force with intoxicating liquor when such member is on duty and prohibited by regulations or instructions from receiving or taking intoxicating liquor,

Aiding or inducing member of Force to dereliction of duty.

shall be guilty of an offence against this Ordinance.

13. Any member of the Force who fails without just cause (the proof whereof shall lie upon him) to attend at any time or place lawfully appointed by proper authority for instructions, training or exercise is guilty of an offence against this Ordinance.

Failure to attend training in Force.

14. Any member of the Force who, without proper authority and permission, gives, sells, pledges, lends or otherwise disposes of any arms, ammunition, accoutrements, clothing, supplies or any other article entrusted to or held by him for the service of the Force is guilty of an offence against this Ordinance, and, in addition to any other penalty which may be imposed under this Ordinance, he may be ordered by the court convicting him to make good the loss or

Wrongful disposal of property.

deficiency, caused by such gift, sale, pledge, loan or other disposition.

Wrongful
detention of
property.

15. Any person who, on discharge from the Force, fails or neglects to render up any arms, ammunition, accoutrement, clothing, supplies or other article supplied to him as a member of the Force on demand being made to him by the proper authority is guilty of an offence against this Ordinance, and in addition to any other penalty which may be imposed under this Ordinance he may be ordered by the court convicting him to make good the loss or deficiency caused by such failure or neglect.

Penalties.

16. (1) Any person who is guilty of an offence against this Ordinance for which no special penalty is provided shall be liable on conviction to a fine of one thousand shillings and, in default of payment, to imprisonment for three months.

(2) Any member of the Force who is convicted of an offence under section 13 of this Ordinance may, in addition to or in lieu of any other penalty, be committed to detention at any depot, training camp or station of the Force, for the purpose of undergoing instruction, training or exercise during such detention; and any member of the Force who, having been committed to detention under this sub-section escapes therefrom or fails to return thereto or fails properly to carry out the instruction, training or exercise given under such detention, is guilty of an offence against this Ordinance and is liable to imprisonment for one month:

Provided that in the committal of an offender to detention under this sub-section the period of detention shall not necessarily be continuous, nor shall it exceed in any one sentence of commitment, a total number of days' detention in excess of twice the total number of days on which such member has unlawfully failed to attend the instruction, training or exercise.

Repeal and
Savings.
No. 45 of 1931.

17. The Kenya Royal Naval Volunteer Reserve Ordinance, 1931, is hereby repealed:

No. 45 of 1931.

Provided that all members of the Kenya Royal Naval Volunteer Reserve who, at the date of the coming into operation of this Ordinance, were members of the Reserve established under the Kenya Royal Naval Volunteer Reserve Ordinance, 1931, shall be deemed to be members of the Force established by this Ordinance to the same extent as if this Ordinance had been in operation at the date on which any such member became a member of such Reserve.

Su Ord No 21/45-

ORDINANCE No. III of 1940

Assented to in His Majesty's name this sixteenth day of January, 1940.

HENRY MOORE,
Governor.

[16TH JANUARY, 1940.] Date of assent.

An Ordinance to Amend the Sisal Industry Ordinance, 1939

16th January, 1940

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 Sisal Industry (Amendment) Ordinance, 1940, and shall be read as one with the Sisal Industry Ordinance, 1939, hereinafter referred to as the Principal Ordinance.

Short title.

No. 19 of 1939.

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "sisal fibre" and by substituting therefor the following definition—

Amendment of section 2 of the Principal Ordinance.

"sisal fibre' means the raw fibrous product derived from the plant *Agave rigida* var. *sisalana* and allied species."

3. Section 3 of the Principal Ordinance is hereby repealed and the following section is substituted therefor—

Repeal and replacement of section 3 of the Principal Ordinance.

"3. There shall be paid to the Commissioner of Customs a levy on—

Levy on sisal fibre produced and exported.

(a) all sisal fibre produced in, and exported from, the Colony;

(b) such articles, as the Governor may by notice in the Gazette declare, which are manufactured from sisal fibre in, and exported from, the Colony."

4. Sub-section (2) of section 6 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor—

Repeal and replacement of section 6 (2) of the Principal Ordinance.

“(2) The Governor, with the advice of the Board, may at any time by order alter the rate of such levy, and such altered rate shall come into force two months after the date of such order.”

5. Sub-sections (2) and (3) of section 7 of the Principal Ordinance are hereby repealed and the following sub-sections are substituted therefor—

Repeal and replacement of section 7 (2) and (3) of the Principal Ordinance.

“(2) Such fund shall be in the custody of the Accountant General who, as soon as possible after the last day of each month, shall pay the amount of such fund into an account opened in the name of the Board with a bank approved by the Governor, and the receipt of such bank for sums so paid shall be a full and effectual discharge to the Accountant General.

(3) The Board shall keep account of the receipts and disbursements in connexion with the fund and within a reasonable time after the expiration of each year shall cause to be prepared a statement of the receipts and disbursements during the previous year, and such statement shall be subject to such audit and published in such manner as the Governor may direct.”

6. Paragraph (c) of section 13 of the Principal Ordinance is hereby amended by adding, at the end thereof, the following new sub-paragraph—

Amendment of section 13 (c) of the Principal Ordinance.

“(vi) any statistics relating to the planting and/or production of sisal fibre as the Board may require for purposes connected with the sisal industry;”.

7. Paragraph (a) of sub-section (2) of section 16 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor—

Amendment of section 16 (2) of the Principal Ordinance.

“(a) other than the person to whom he is required in the course of his duty to communicate it or to any person approved by the Governor; or”.



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, May 7, 1940

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ORDINANCE No. IV of 1940

Assented to in His Majesty's name this twenty-ninth day
of April, 1940.

HENRY MOORE,
Governor.

[29TH APRIL, 1940.] Date of assent.

**An Ordinance to Provide for the Preservation of
Land and Water Resources of the Colony and
for matters incidental thereto**

29th April, 1940

Date of com-
mencement.

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 and Water Short title.
Preservation Ordinance, 1940.

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

“body of water” means water contained in, or flowing
in, a spring, stream, natural lake, or swamp, or in or beneath
a watercourse;

“Director” means the Director of Agriculture;

“live stock” includes cattle, sheep, goats, horses, mules,
donkeys, pigs, camels, buffaloes and any other animal which
the Governor may by order declare to be included in this
definition for the purposes of this Ordinance;

“local authority” means a Municipal Council or Board
established under the Local Government (Municipalities)
Ordinance, 1928, or a District Council established under the No. 19 of 1928.
Local Government (District Councils) Ordinance, 1928, or a
Local Native Council established under the Native Authority No. 21 of 1928.
Ordinance, 1937, in respect of the respective areas of juris- No. 2 of 1937.
diction so conferred upon them, and, where there is no
Municipal Council or Board, District Council or Local Native
Council, means a Committee appointed by the Governor in
Council, by notice in the Gazette, consisting of a Chairman
and such members as are specified in the notice, and the
Governor in Council may, by any such notice, appoint differ-
ent Committees for different areas;

“trees” shall include not only timber trees, but trees,
shrubs, bushes of all kinds, seedlings, saplings, and re-shoots
of all ages, and any part of a tree;

“vegetation” includes trees, palms, bamboos, stumps, brushwood, undergrowth and grass;

“watercourse” means a natural channel or depression in which water flows, either continuously or intermittently.

Power to
make rules.

3. ~~(1) The Governor in Council may make rules, all or any of which shall apply to such areas as the Governor in Council may by notice in the Gazette appoint, for all or any of the following purposes:—~~

(A) regulating, controlling and/or prohibiting any or all of the following matters:—

(a) the breaking up or clearing of land for cultivation or for any other purpose;

(b) the grazing and/or watering of live stock; or

(c) the firing or clearing of vegetation,

when such regulating, controlling, and/or prohibiting is deemed by the Governor in Council to be necessary for—

(i) protection against storms, winds, rolling stones, floods and landslips;

(ii) the preservation of the soil on ridges, on slopes and in valleys;

(iii) the prevention of landslips or the formation of gullies, or for the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iv) the maintenance of water in a body of water;

(v) the protection of roads, bridges, railways and other lines of communication;

(vi) the preservation of public health; or

(vii) generally in the public interest;

(B) regulating and controlling the destruction of vegetation;

(C) the afforestation or re-afforestation of land;

(D) protecting slopes and catchment areas;

(E) constructing contour banks and terraces;

(F) repairing gullies;

Replaced by

Ord. 33/40

l. 203

~~(C) generally for the better carrying out of the purposes of this Ordinance.~~

(2) (a) Before any rule made under this Ordinance is applied to any area, the Director shall forward to the local authority within which such area is situate a copy of such rule together with a notice stating the period, which shall not be less than one month from the date of the notice, within which such local authority and/or any person may object to the application of such rule.

(b) On receipt of the copy and notice aforesaid the local authority concerned shall—

(i) deposit such copy and notice at its office for inspection by any person at all reasonable times; and

(ii) cause notice of such deposit to be given in such manner as it thinks best for bringing it to the notice of persons resident in the area in which such local authority is situate.

(c) Objections, if any, and any evidence in support of the same, shall be forwarded by the local authority to the Director, within the period aforesaid, and any such objections and evidence shall be considered by the Governor in Council.

(3) (a) Any rule made under sub-section (1) of this section may require acts or things to be performed or done to the satisfaction of the Director or any person appointed by him, and may empower the Director or such person to issue orders to any person requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(b) Any such order may be issued verbally or, if so demanded by the person to whom it is issued, shall be in writing.

(c) An appeal shall lie against any such order in the manner provided by sub-sections (4) and (5) of this section.

(4) Any person who considers that any order issued to him by a person appointed by the Director under sub-section (3) of this section is unreasonable may appeal against such order to the Director, and the decision of the Director thereon shall be subject to a further appeal in the manner provided by sub-section (5) of this section.

(5) The Governor in Council may, by notice in the Gazette, appoint for such areas as are specified in the notice Boards consisting of a Chairman and such members as he may deem fit for the purpose of hearing and determining appeals made by any person who considers that any order issued to him by the Director under sub-section (3) of this section or any decision of the Director affecting him made under sub-clause (4) of this section is unreasonable, and the decision of any such Board shall be final and conclusive and not subject to appeal to any court.

Regulations
relating to
advances.

4. ~~(1) The Governor in Council may make regulations~~ providing for the making of advances whenever any person is required to do any act or thing under any rule made under section 3 of this Ordinance or any order issued under or by virtue of such rule which involves such person in the expenditure of money.

Referred to by
Section 3
1/25/25
(2) Such regulations may provide for all or any of the following purposes whether general or to meet particular cases that may be convenient for the administration of any rules made under section 3 of this Ordinance or any orders issued under or by virtue of such rules or that may be necessary or expedient for carrying out the objects or purposes of such rules or orders and without prejudice to the generality of the foregoing for all or any of the following purposes:—

- (a) the manner in which applications for advances may be made;
- (b) the purposes for, and the terms and conditions on which, advances may be made;
- (c) the maximum amount of, and the rate of interest to be charged on, advances;
- (d) the repayment of advances;
- (e) the manner in which advances may be secured whether by way of a first charge having priority over all prior encumbrances or otherwise.

(3) The regulations may provide that they shall come into operation on such date as may be specified therein and such regulations may be amended or revoked by subsequent regulations.

(4) All regulations made under this section shall be laid before Legislative Council as soon as conveniently may be after they are made, and if the Legislative Council, within a

period of forty days beginning with the day on which such regulations are laid before it, resolves that any such regulation shall be annulled or amended, such regulation shall thenceforth be deemed to be annulled or amended, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations.

5. Where a lessee holding land under a lease from any other person has, in complying with any rule or any order issued under or by virtue of any such rule, done any work on such land, such lessee shall be entitled at the termination of his lease to obtain from the lessor as compensation such sum as fairly represents the residuary value of such work to the lessor.

Right of a lessee to compensation for certain work done.

6. Any question arising under this Ordinance as to what is to be considered as a watercourse or a body of water shall be referred by the appropriate local authority to the Water Board established under the Water Ordinance, 1929, and the decision of the Water Board thereon shall be final and conclusive and not subject to appeal to any court.

Determination of what is a watercourse or a body of water.
No. 35 of 1929.

7. The Governor in Council may by rule fix such penalty for the breach or attempted breach or non-observance of any rule or order issued under or by virtue of such rule, as he may think fit, but no such penalty shall exceed a fine of one hundred pounds or imprisonment for a period of six months, or both such fine and imprisonment, and where no penalty is fixed, the breach or attempted breach or non-observance of any such rule or order shall be punishable to the extent aforesaid.

Penalties.

8. Nothing contained in this Ordinance or in any rules made thereunder shall directly or indirectly affect the provisions of the Water Ordinance, 1929, or any Ordinance amending or replacing the same, or any rules made thereunder.

Saving of provisions of Water Ordinance, 1929.
No. 35 of 1929.

*Schedule added by
Ord. 33/40, p. 256*

ORDINANCE No. V of 1940

Assented to in His Majesty's name this sixteenth day of January, 1940.

HENRY MOORE,
Governor.

[16TH JANUARY, 1940.] Date of assent.

An Ordinance to Provide for the Establishment of an Arbitration Tribunal and a Board of Inquiry in connexion with Trade Disputes, and to make Provision for the Settlement of such Disputes, and for the purpose of inquiring into Economic and Industrial Conditions in the Colony

16th January, 1940

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 Trade Disputes (Arbitration and Inquiry) Ordinance, 1940. Short title.

2. (1) In this Ordinance, unless the context otherwise requires— Intpretation.

“trade dispute” means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person;

“workman” means any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

(2) This Ordinance shall not apply to persons in the naval, military or air services of the Crown, or to the Police Force, but otherwise shall apply to workmen employed by or under the Crown in the same manner as if they were employed by or under a private person. Application of Ordinance to the Crown.

3. (1) Any trade dispute as defined by this Ordinance, whether existing or apprehended, may be reported to the Governor by or on behalf of either of the parties to the dispute, and the Governor shall thereupon take the matter into his consideration and take such steps as seem to him expedient for promoting a settlement thereof. Trade disputes may be reported to the Governor.

Replaced by Ord. 71/48

Reference of
disputes to
Arbitration
Tribunal and
constitution of
the Tribunal.

(2) Where a trade dispute exists or is apprehended, the Governor may, subject as hereinafter provided, if he thinks fit and if both parties consent, refer the matter for settlement to an Arbitration Tribunal constituted of either—

- (a) a sole arbitrator appointed by the Governor; or
- (b) an arbitrator appointed by the Governor, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the workmen concerned, all of whom shall be appointed by the Governor:

Provided that the award shall be made and issued by the arbitrator only; or

- (c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by the Governor:

Provided that where all the members of the Tribunal are unable to agree as to their award, the matter shall be decided by the chairman as sole arbitrator.

Means of con-
ciliation before
reference to
Tribunal.

(3) If there are existing in any trade or industry any arrangements for settlement by conciliation or arbitration of disputes in such trade or industry, or any branch thereof, made in pursuance of an agreement between organizations of employers and organizations of workmen representative respectively of substantial proportions of the employers and workmen engaged in that trade or industry, the Governor shall not, unless with the consent of both parties to the dispute, and unless and until there has been a failure to obtain a settlement by means of those arrangements, refer the matter for settlement in accordance with the foregoing provisions of this section.

Cap. 18.

(4) The Arbitration Ordinance shall not apply to any proceedings of an Arbitration Tribunal under this Ordinance or to any award issued by it.

Vacancies on the
Tribunal.

4. (1) Whenever an Arbitration Tribunal consists of more than one arbitrator and any vacancy occurs in their number the Tribunal may, with the consent of the parties, act notwithstanding such vacancy.

(2) Whenever the Tribunal consists of an arbitrator, assisted by assessors and any vacancy occurs in the number of assessors the Tribunal may in the discretion of the arbitrator either act notwithstanding such vacancy or consent to another assessor being nominated and appointed to fill such vacancy.

(3) No act, proceeding or determination of the Tribunal shall be called in question or invalidated by reason of any such vacancy, provided that in the circumstances referred to in sub-section (1) of this section the required consent has been first obtained.

5. Where any trade dispute referred to an Arbitration Tribunal involves questions as to wages, or as to hours of work, or otherwise as to the terms or conditions of or affecting employment which are regulated by any Ordinance other than this Ordinance, the Tribunal shall not make any award which is inconsistent with the provisions of that Ordinance.

Award of Tribunal not to conflict with any law.

6. Any award of an Arbitration Tribunal shall be submitted to the Governor who shall as soon as possible thereafter cause the same to be published in such manner as he thinks fit.

Publication of the award.

7. If any question arises as to the interpretation of any award of an Arbitration Tribunal, the Governor or any party to the award may apply to the Tribunal for a decision on such question, and the Tribunal shall decide the matter after hearing the parties, or without such hearing provided the consent of the parties has been first obtained. The decision of the Tribunal shall be notified to the parties and shall be deemed to form part of and shall have the same effect in all respects as the original award.

Interpretation of the award.

8. (1) Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under this Ordinance, inquire into the causes and circumstances of the dispute, and, if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a Board of Inquiry (hereinafter referred to as the Board) appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor.

Inquiry into trade disputes and industrial conditions.
Appointment of a Board of Inquiry.

(2) The Governor may also refer any matter connected with the economic or industrial conditions in the Colony to the Board for inquiry and report.

(3) The Board shall consist of a chairman and such other persons as the Governor thinks fit to appoint, or may, if the Governor thinks fit, consist of one person appointed by the Governor.

(4) The Board may act notwithstanding any vacancy in their number.

Reports of the
Board and
publication.

9. (1) A Board of Inquiry may, if it thinks fit, make interim reports.

(2) Any report of the Board, and any minority report, shall be submitted to the Governor.

(3) The Governor may cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the Board as the result or in the course of the inquiry:

Provided that there shall not be included in any report or publication made or authorized by the Board or the Governor any information obtained by the Board in the course of the inquiry as to any trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through evidence given at the inquiry, except with the consent of the secretary of the trade union or of the person, firm or company in question, nor shall any individual member of the Board or any person concerned in the inquiry, without such consent, disclose any such information.

Evidence.

10. For the purpose of dealing with any matter referred to it, an Arbitration Tribunal or a Board of Inquiry, as the case may be, shall have full power by order to require any person to furnish, in writing or otherwise, such particulars in relation to such matter as the Tribunal or the Board may require, and where necessary to attend before the Tribunal or the Board and give evidence on oath or otherwise, and to require the production of documents, so as to elicit all such information as in the circumstances may be considered necessary, without being bound by the rules of evidence in civil or criminal proceedings:

Provided always that, if any witness objects to answer any question or to produce any document on the ground that it will tend to incriminate him or on any other lawful ground, he shall not be required to answer such question or to produce such document, or shall he be liable to any penalties for refusing so to do.

11. It shall be in the discretion of an Arbitration Tribunal or a Board of Inquiry, as the case may be, to permit any interested person to appear by advocate on any proceedings or inquiry under this Ordinance before such Tribunal or Board.

Appearance of advocate.

12. (1) It shall be in the discretion of an Arbitration Tribunal or a Board of Inquiry, as the case may be, to admit or exclude the public or the Press from any of its sittings.

Sittings may be public or private.

(2) Whenever the Press shall have been allowed to be present at a sitting of the Tribunal or of the Board, and not otherwise, a fair and accurate report or summary of the proceedings including the evidence adduced at that sitting may be published:

Publication of proceedings.

Provided however that until the award or the result of the inquiry has been published by order of the Governor no comment shall be published in respect of the proceedings or the evidence. Any person guilty of a contravention of this provision shall be liable on summary conviction to a penalty not exceeding one hundred pounds.

13. The Governor in Council may make Rules regulating the procedure to be followed by an Arbitration Tribunal or a Board of Inquiry, and whenever any question shall arise in the course of an arbitration or an inquiry in respect of which Rules have not been made the Tribunal or the Board, as the case may be, shall regulate its own procedure.

Power to make Rules.

14. (1) It shall be lawful for the Governor in Council to pay to any arbitrator or assessor or to any member of a Board of Inquiry appointed under this Ordinance such remuneration as the Governor shall think fit.

Expenses.

(2) The Governor in Council may appoint at such remuneration and on such terms and conditions as he may determine such officers and other servants as may be necessary for carrying out the purposes of this Ordinance.

(3) Any expenses incurred in carrying this Ordinance into operation and approved of by the Governor in Council shall be paid out of the revenues of the Colony.

ORDINANCE No. VI of 1940

Assented to in His Majesty's name this fifteenth day of April, 1940.

HENRY MOORE,
Governor.

[15TH APRIL, 1940.] Date of assent.

An Ordinance to Apply the Acts of the Imperial Parliament shortly entitled the Official Secrets Acts to the Protectorate and to Make Provision whereby the Government is Empowered to Require the Production of Telegrams

15th April, 1940

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. (1) This Ordinance may be cited as the Official Secrets Ordinance, 1940. Short title.

(2) The provisions of this Ordinance shall apply to the Protectorate only save that the provisions of sections 4 and 5 shall apply to both the Colony and Protectorate. Application.

2. In this Ordinance—

“The Official Secrets Acts” means the (Imperial) Official Secrets Acts, 1911 and 1920, and any Act amending or replacing the same. Interpretation.
1 & 2 Geo. V, c.28.
10 & 11 Geo. V, c.75.

3. The provisions of the Official Secrets Acts which apply to acts which are offences under those Acts when committed in any part of His Majesty's dominions or when committed by British officers or subjects elsewhere, shall apply to such acts when committed in the Protectorate by persons who are not British officers or subjects as if those provisions were set out herein. Application of the Official Secrets Acts to the Protectorate.

4. (1) Where it appears to the Governor that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the Colony, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the Colony by means of any such cable, wire, or apparatus, and all other papers relating to any such telegrams as aforesaid. Power to require the production of telegrams.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence against this Ordinance, and shall for each offence be liable on conviction to imprisonment for a period not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

32 and 33 Vict.,
c.73, 4 Edw. 7,
c.24.

(3) In this section the expression "telegram" shall have the same meaning as in the (Imperial) Telegraph Act, 1869, and the expression "wireless telegraphy" shall have the same meaning as in the (Imperial) Wireless Telegraphy Act, 1904.

Duty to give
information as
to commission
of certain
offences.
1 & 2 Geo. V,
c. 28.

5. (1) Where the Commissioner of Police is satisfied that there is reasonable ground for suspecting that an offence under section 1 of the (Imperial) Official Secrets Act, 1911, has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to the Governor for permission to exercise the powers conferred by this sub-section and, if such permission is granted, he may authorize a Superior Police Officer to require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the Superior Police Officer; and if a person required in pursuance of such an authorization to give information, or to attend as aforesaid, fails to comply with any such requirement or knowingly gives false information he shall be guilty of a misdemeanour.

(2) Where the Commissioner of Police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the Colony immediate action is necessary, he may exercise the powers conferred by the last foregoing sub-section without applying for or being granted the permission of the Governor, but if he does so shall forthwith report the circumstances to the Governor.

(3) References in this section to the Commissioner of Police shall be construed as including references to any other officer of police expressly authorized by the Commissioner of Police to act on his behalf for the purposes of this section when by reason of illness, absence, or any other cause he is unable to do so.

Repeal.
No. 9 of 1939.

6. The Official Secrets Ordinance, 1939, is hereby repealed.

ORDINANCE No. VII of 1940

Assented to in His Majesty's name this fifteenth day of April, 1940.

HENRY MOORE,
Governor.

[15TH APRIL, 1940.] Date of assent.

**An Ordinance to Provide for the Administration of
Certain Estates by Consular Officers**

15th April, 1940

Date of commencement.

WHEREAS it is expedient that effect should be given in the Colony to the provisions of certain Treaties of Commerce and Navigation mentioned in the Schedule hereto;

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 Administration of Estates by Consular Officers Ordinance, 1940.

Short title.

2. Whenever any subject or citizen of any State mentioned in the first column of the Schedule hereto—

Administration of estates by Consular Officers.

(a) dies within the Colony, or

(b) dies outside the Colony, leaving property within the Colony,

and no person is present in the Colony at the time of his death who is rightfully entitled to administer the estate of such deceased person, the Consul, Vice-Consul, or Consular Agent of such State within the Colony may take possession and have the custody of the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto; but such Consul, Vice-Consul, or Consular Agent shall immediately apply for, and shall be entitled to obtain from the Court, letters of administration of the property of such deceased person, limited in such manner and for such time as to the Court shall seem fit.

3. The Governor may by order published in the Gazette vary the Schedule—

Variation of Schedule.

(a) by deleting therefrom any State when the provision of the Treaty with that State mentioned in the Schedule shall have ceased to have effect;

(b) by adding thereto any State with whom His Majesty shall make a Treaty of Commerce and Navigation containing provision similar to any of the provisions mentioned in the Schedule.

SCHEDULE

Name of State	Title of Treaty	Date of Treaty	Provision
Estonia ..	Treaty of Commerce and Navigation between the United Kingdom and Estonia.	18th January, 1926	Article 22
Finland ..	Treaty of Commerce and Navigation between the United Kingdom and Finland.	14th December, 1923	Article 19 (third paragraph)
Greece ..	Treaty of Commerce and Navigation between the United Kingdom and Greece.	16th July, 1926	Article 23
Hungary ..	Treaty of Commerce and Navigation between the United Kingdom and Hungary.	23rd July, 1926	Article 14
Japan ..	Treaty of Commerce and Navigation between the United Kingdom and Japan.	3rd April, 1911	Article 5
Thailand ..	Treaty of Commerce and Navigation between the United Kingdom and Siam (Thailand).	23rd November, 1937	Article 19
Turkey ..	Treaty of Commerce and Navigation between the United Kingdom and Turkey	1st March, 1930	Article 28
Yugoslavia ..	Treaty of Commerce and Navigation between the United Kingdom and the Kingdom of the Serbs, Croats and Slovenes.	12th May, 1927	Article 24

ORDINANCE No. VIII of 1940

Assented to in His Majesty's name this fifteenth day of April, 1940.

HENRY MOORE,
Governor.

[15TH APRIL, 1940.] Date of assent.

An Ordinance to Amend the Land and Agricultural Bank Ordinance, 1930

15th April, 1940

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 and Agricultural Bank (Amendment, No. 2) Ordinance, 1940, and shall be read as one with the Land and Agricultural Bank Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 3 of 1931

2. Section 11 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 11 of the Principal Ordinance.

“11. (1) The Chairman and every member of the Board shall be paid out of the funds of the bank such remuneration as the Governor may from time to time determine:

Provided that no member other than the Chairman shall be paid more than three hundred pounds in any one year.

(2) Any remuneration paid before the coming into force of this section in pursuance of any such power as is mentioned in sub-section (1) of this section, and which would have been lawfully paid if this section had come into force on the first day of November, 1931, shall be deemed to have been lawfully paid.”

ORDINANCE No. IX of 1940

Assented to in His Majesty's name this fifteenth day of April, 1940.

HENRY MOORE,
Governor.

[15TH APRIL, 1940.] Date of assent.

An Ordinance to Amend the Agricultural Mortgagors' Relief Ordinance, 1934

15th April, 1940

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 Mortgagors' Relief (Amendment) Ordinance, 1940, and shall be read as one with the Agricultural Mortgagors' Relief Ordinance, 1934, hereinafter referred to as the Principal Ordinance.

Short title.

No. 35 of 1934.

2. Section 8 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section:—

Amendment of section 8 of the Principal Ordinance.

“(3) Nothing in sub-section (2) of this section shall be deemed to preclude a mortgagor who has been granted relief under the provisions of this Ordinance from making an application for further relief:

Provided that, in no case shall the Court make, in respect of an application by the same mortgagor, any orders which would have the effect of granting such mortgagor relief in respect of more than three periods of twelve months each:

Provided further that nothing in this section contained shall be deemed to override the provisions of the last proviso to sub-section (2) of this section:

And provided further that this sub-section shall not apply to any mortgagor who falls within the provisions of section 7A of this Ordinance.”

ORDINANCE No. X of 1940

Assented to in His Majesty's name this fifteenth day of April, 1940.

HENRY MOORE,
Governor.

[15TH APRIL, 1940.] Date of assent.

An Ordinance to Amend the Stamp Ordinance

1st January, 1940

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 Stamp (Amendment) Ordinance, 1940, and shall be read as one with the Stamp Ordinance (Chapter 57 of the Revised Edition), hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into force on the first day of January, 1940.

Short title and commencement.

Cap. 57.

2. Article 20 of the Schedule to the Principal Ordinance is hereby amended by the addition thereto of the following heading and paragraph:—

Amendment of Schedule to the Principal Ordinance.

<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>
<p style="text-align: center;">EXEMPTION</p> <p>Cheque drawn upon and payable out of any public account for any pay or allowance of His Majesty's Regular Forces or for any other expenditure connected therewith.</p>	<p style="text-align: center;"><i>or Island</i></p>

or the Armed Forces of any Allied Power

INCOME TAX ORDINANCE, 1940

Clause

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2. Interpretation.

PART II—ADMINISTRATION

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PART III—IMPOSITION OF INCOME TAX

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8. Basis of assessment.
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PART IV—EXEMPTIONS

10. Exemptions, and power of Governor in Council to exempt.
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PART V—ASCERTAINMENT OF TOTAL INCOME

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14. Deductions not to be allowed.
15. Valuation of stock, etc., in the case of a farmer.
16. Profits of non-resident persons from sale of exported produce.
17. Insurance companies.
18. Profits of non-resident shipowners.
19. Profits of non-resident air transport, cable, etc., undertakings.
20. Income from certain dividends to include tax thereon.
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24. Resident, wife, children, dependants, life assurance, superannuation funds, etc.
25. Non-resident allowances.
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PART VII—RATES OF TAX, RIGHTS OF DEDUCTION,
AND ALLOWANCES FROM TAX CHARGED*A—Rate of Tax*

27. Rates of tax.

B—Rights of Deduction

28. Deduction of tax from dividends and debenture interest by companies.
29. Deduction of tax from mortgage interest.

C—Allowances from Tax Charged

30. Tax deducted from dividends, debenture and mortgage interest.
31. Set-off of Poll Tax.
32. Relief in respect of United Kingdom income tax.
33. Relief in respect of Empire income tax.

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34. Wife's income and right to claim separate assessment.

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35. Chargeability of trustees, etc.
36. Chargeability of agent of person resident out of the Colony.

Clause

37. Acts, etc., to be done by trustees and manager of corporate bodies of persons.
38. Power to appoint agent and to require information.
39. Indemnification of representative.
40. Deceased persons.
41. Joint trustees.

C—Partnership

42. Partnerships.

PART IX—RETURNS AND NOTICES

43. Notice of chargeability and returns.
44. Commissioner may call for further returns.
45. Power to call for returns, books, etc.
46. Returns to be deemed to be furnished by due authority.
47. Books of account.
48. Official information and official secrecy.
49. Obligations of employers.
50. Return to be furnished of income received on account of, or paid to, other persons.
51. Occupiers to furnish return of rent payable.
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*Amended by
Ord. 26/40*

ORDINANCE No. XI of 1940

Assented to in His Majesty's name this twenty-fourth day
of April, 1940.

*Ord. 36/41
Ord. 2/46*

HENRY MOORE,

Ord. 16/47 p. 101.

Governor

[24TH APRIL, 1940.]

3/47
Date of assent.

**An Ordinance to Consolidate and Amend the Law
relating to Income Tax**

1st January, 1940

*07/48
32/49*
Date of com-
mencement.

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

PART I

PRELIMINARY

1. This Ordinance may be cited as the Income Tax Ordinance, 1940, and shall be deemed to have come into operation on the first day of January, 1940.

Short title
and com-
mencement

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

Interpretation.

“another East African territory” means all or any of the following territories, that is to say: the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate;

“body of persons” means any body politic corporate or collegiate and any company fraternity fellowship or society of persons whether corporate or unincorporate;

“Commissioner” means the Commissioner charged with the administration of this Ordinance, and includes a Deputy Commissioner or an Assistant Commissioner for all the purposes of this Ordinance except the exercise of the powers conferred upon the Commissioner by sections 74, 75 and 77 of this Ordinance;

“company” means any company incorporated or registered under any law in force in the Colony or elsewhere;

“debenture interest” means interest payable by a company under or by virtue of a debenture or debenture trust deed or mortgage or any other instrument or document acknowledging indebtedness;

“farmer” means any person who carries on pastoral, agricultural or other similar operations;

“incapacitated person” means any infant, lunatic, idiot, or insane person;

No. 19 of 1928 “local authority” means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, No. 21 of 1928 1928, or a local native council established under the Native Authority Ordinance, 1937; No. 2 of 1937.

“local committee” means a committee appointed by the Governor under section 60 of this Ordinance;

“loss” in relation to a trade, business, profession or vocation means loss computed in like manner as profits;

“mills, factories, or other similar premises” means any building which forms part of premises, being either—

(i) a building which contains, and is used wholly or mainly for the purpose of operating machinery worked by steam, electricity, water or other mechanical power, or

(ii) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as is mentioned in paragraph (i) of this definition;

“permanent” or “semi-permanent crop” means citrus, coco-nuts, coffee, essential oils, New Zealand flax, passion fruit, pyrethrum, sisal, sugar cane, tea, wattle, rubber, vanilla, and such other crops as the Governor in Council may from time to time declare by notice in the Gazette;

“permanent cultivation” means the cultivation of land for the purpose of producing permanent or semi-permanent crops;

“person” includes any company or association or body of persons corporate or unincorporate;

“premises” includes dwelling-house;

“resident in the Colony”, when applied to an individual, means an individual who resides in the Colony except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in the Colony; when applied to a body of persons, means any body of persons the control and management of whose business are exercised in the Colony:

Provided that where a person is also resident in another East African Territory he shall be deemed to be resident only

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in the territory in which he has been resident for the longest period during the year preceding the year of assessment;

"Tanganyika Ordinance" means the Tanganyika War Revenue (Income Tax) Ordinance, 1939, and any Ordinance amending or replacing the same;

"tax" means the income tax imposed by this Ordinance;

"total income" means the aggregate amount of the income of any person from the sources specified in Part III of this Ordinance remaining after allowing the exemptions under Part IV and computed in accordance with the provisions of Part V of this Ordinance;

"Uganda Ordinance" means the Uganda Income Tax Ordinance, 1940, and any Ordinance amending or replacing the same;

"written-down value" means the residue of the cost to the owner thereof of any property, including plant, machinery and premises, after deducting a sum representing the total depreciation by reason of wear and tear which has occurred in such property since the date of its acquisition by him;

"year of assessment" means the period of twelve months commencing on the first day of January, 1937, and each subsequent period of twelve months;

"Zanzibar Decree" means the Zanzibar Income Tax Decree, 1940, and any Decree amending or replacing the same.

PART II

See Ord. 3/17 para 2 p. 3 ADMINISTRATION

3. For the due administration of this Ordinance the Commissioner. Governor may appoint a Commissioner, a Deputy Commissioner, Assistant Commissioners, and such other officers and persons as may be necessary.

Any person appointed for the due administration of the Tanganyika or the Uganda Ordinance or the Zanzibar Decree shall be deemed to be a person employed in the administration of this Ordinance.

4. (1) Every person having any official duty or being Official secrecy. employed in the administration of this Ordinance shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income or items of income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to

that effect before a magistrate. No stamp duty shall be charged in respect of any such declaration.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

(a) other than a person to whom he is authorized by this Ordinance or the Governor to communicate it; or

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first or second class to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance, or in order to, or in the course of, a prosecution for any offence committed in relation to income tax.

(4) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom provision is made for the allowance of relief from income tax in respect of the payment of income tax in this Colony, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government in that part, place or territory of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in this Colony or from income tax in that part, place or territory aforesaid.

(5) Notwithstanding anything contained in this section the Commissioner may permit the Auditor of the Colony or

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any officer duly authorized in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of this section.

5. (1) The Governor in Council may from time to time **Rules.** make rules generally for carrying out the provisions of this Ordinance and may, in particular, by those rules provide—

- (a) for the deduction and payment of tax at the source in respect of emoluments and pensions payable out of the revenue of the Colony or from the funds of the Kenya and Uganda Railways and Harbours Services;
- (b) for assessing the amount to be taken as the annual value of land and improvements thereon occupied rent free by persons in the public service of the Colony or of the Kenya and Uganda Railways and Harbours Services;
- (c) for any such matters as are authorized by this Ordinance to be prescribed.

(2) The Commissioner may from time to time **Forms.** specify the form of returns, claims, statements and notices under this Ordinance.

6. (1) (a) Except where it is provided by this Ordinance **Service of notices.** that service shall be effected either personally or by registered post a notice may be served on a person either personally or by being sent through the post to his last known place of business or private address.

(b) Where a notice is served by ordinary or by registered post it shall be deemed to have been served not later than the seventh day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such notice it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

(2) All returns, additional information and resulting **Free postage.** correspondence and payment of tax under the provisions of this Ordinance may be sent free of postage to the Commissioner in envelopes marked "Income Tax".

PART III

IMPOSITION OF INCOME TAX

Charge of
income tax.

7. (1) Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1937, and for each subsequent year of assessment upon the income of any person, who is not resident in the Colony, accruing in, derived from, or received in, the Colony, and upon the income of any person who is resident in the Colony, accruing in, derived from, or received in, the Colony and/or another East African territory in respect of—

Income
chargeable.

- (a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance (other than a subsistence, travelling or an entertainment allowance which is proved to the satisfaction of the Commissioner to have been expended for purposes other than those in respect of which no deduction is allowed under section 14 of this Ordinance) granted in respect of employment whether in money or otherwise;
- (c) the net annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and other profits arising from property.

(2) Nothing in this section contained shall be deemed to apply to the value of any quarters or of any houses situate on a farm or mine and bona fide occupied by an owner, or by any employee of such owner, solely for the purpose of carrying on farming or mining operations, as the case may be.

(3) Any sum realized under any insurance against a loss of profits shall be taken into account in the ascertainment of any profits or income.

(4) (a) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than three-fourths of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than three-fourths of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom, or in respect of the income which would be assessable if it were not deemed to carry on a business, whichever is the greater.

Ascertainment
of income of
clubs, trade
associations,
etc.

(b) In this sub-section, "members" in relation to a body of persons means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

(c) Nothing in this sub-section shall operate to annul or reduce any exemption granted in section 10 of this Ordinance.

(5) Where in ascertaining the chargeable income of a company, or of a co-operative society registered under any law for the time being in force relating to the registration of such societies, a deduction was allowed for the years of assessment 1937 and/or 1938 and/or 1939 in respect of a sum carried to a reserve fund—

(a) any sum so deducted shall be taken into account and set off against any loss which may be incurred in any subsequent year;

(b) any sum of money withdrawn from such reserve fund for any purpose whatsoever, or charged in any way whatsoever, other than for the purpose of being set off against a loss incurred under the provisions of paragraph (a) of this sub-section, shall be deemed to be part of the total income of the year in which such sum is withdrawn or charged, as the case may be, and shall be assessable accordingly;

(c) where any company is being wound up or reconstructed, any sum in such reserve fund shall be deemed to have been distributed and shall be assessable accordingly, and the tax due in respect of such sum shall, notwithstanding anything to the contrary contained in any law for the time being in force, be a first charge on the assets of the company.

(6) - Added by Ord 2/46 - Amended by Ord 3/47 p.3 para 3(b)
(7) " " " " 3/47 p.3 para 3(b).

Basis of assessment.

8. ~~Tax shall be charged, levied and collected~~ for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment notwithstanding that the source of income may have ceased before or during the year of assessment:

Provided that where in any year of assessment any person ceases to possess any source of income which was acquired by him prior to the first day of January, 1936 (or in the case of income accrued in, derived from, or received in, another East African territory, prior to the first day of January, 1939), tax on the income from that source shall be charged, levied and collected upon the income of the year of assessment and not upon the income of the year preceding the year of assessment.

Special periods of assessment.

9. Where the Commissioner is satisfied that any person usually makes up the accounts of his trade or business on some day other than that immediately preceding any year of assessment, the Commissioner may permit the gains or profits of that trade or business of the year terminating on, or any day before, the thirty-first day of March in the year of assessment or on any day subsequent to the thirty-first day of March in the year immediately preceding the year of assessment on which the accounts of the said trade or business have been usually made up to be taken to be the gains or profits of the year immediately preceding the year of assessment:

Provided that, where permission as aforesaid has been given for any year of assessment, tax shall be charged, levied and collected either upon the gains or profits of the year terminating on the like date in the year of assessment or in the year immediately preceding the year of assessment, as the case may be, or on such other date and subject to any such adjustment as in the opinion of the Commissioner, may be just and reasonable.

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PART IV

EXEMPTIONS

Exemptions.

10. (1) There shall be exempt from the tax—
- (a) the official emoluments received by the officer administering the Government of the Colony;
 - (b) the income of the Kenya and Uganda Railways and Harbours Services;

- (c) the income of the Asiatic Widows' and Orphans' Fund established under the Asiatic Widows' and Orphans' Pension Ordinance, 1927; No. 20 of 1927.
- (d) the income of the European Civil Service Provident Fund established under the European Civil Service Provident Fund Ordinance, 1934; No. 27 of 1934
- (e) the income of the Asian Civil Service Provident Fund established under the Asian Civil Service Provident Fund Ordinance, 1934; No. 64 of 1934.
- (f) the income of any provident fund lawfully established by a local authority;
- (g) the income of any pension, saving, provident, or other society or fund approved by the Commissioner under section 24 of this Ordinance;
- (h) the income of any local authority in so far as such income is not derived from a trade or business carried on by the local authority for the purpose of gain or profit:
- Provided that the Governor in Council by order, subject to such conditions as he may impose and for such period as may be stated in the order, may exempt from the tax the income of any local authority derived from a trade or business if he is satisfied that the public interest is best served by such exemption;
- (i) the income of an ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution, and the income of trusts of a public character;
- (j) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
- (k) the emoluments payable from Imperial funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in the Colony in respect of their offices under the Imperial Government;
- (l) the emoluments payable from Dominion or Indian funds to any accredited representative in the Colony of any Dominion or India;

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- (m) pensions or gratuities granted in respect of wounds or disabilities caused in war;
- (n) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries;
- (o) the income of the Post Office Savings Bank;
- (p) the income of the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;
- No. 3 of 1931.
- (q) the income of the Farmers Conciliation Board established under the Farmers Assistance Ordinance, 1936;
- No. 18 of 1936.
- (r) the income of the Coffee Board established under the Coffee Industry Ordinance, 1934;
- No. 54 of 1934.
- (s) the income of the Kenya Sisal Board established under the Sisal Industry Ordinance, 1939;
- No. 19 of 1939.
- (t) the profits of a non-resident shipowner as defined in section 18 of this Ordinance, provided that the country to which such non-resident shipowner belongs extends a similar exemption to shipowners who are not resident in such country but who are resident in the Colony and, if such country is a country other than the United Kingdom, to shipowners who are not resident in such country but who are resident in the United Kingdom;
- (u) the income of the Passion Fruit Board established under the Passion Fruit Ordinance, 1937;
- No. 11 of 1937.
- (v) the income of the Pyrethrum Board established under the Pyrethrum Ordinance, 1938;
- No. 3 of 1938.
- (w) the income of the Tea Cess Board established under the Tea Cess Ordinance, 1937;
- No. 22 of 1937.
- (x) any income accruing in, derived from, or received in, the Colony by a person resident in another East African territory which is chargeable with and not exempted from income tax in another East African territory:

Provided that nothing in this sub-section shall be construed to exempt in the hands of the recipients any dividends, interest, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted.

Power of
Governor in
Council to
exempt.

(2) The Governor in Council may exempt any person or class of persons from all or any of the provisions of this Ordinance on any ground which to him may seem sufficient.

11. The Governor may by proclamation published in the Gazette provide that the interest payable on any loan charged on the public revenue of the Colony shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in the Colony; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

Government
loans.

12. Tax shall not be payable in respect of any income arising outside the Colony and received therein by any person who is in the Colony for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in the Colony at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

Temporary
residents.

PART V

ASCERTAINMENT OF TOTAL INCOME

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

Deductions
allowed.

- (a) except as hereinafter provided, sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) where any person engaged in any trade, business, profession or vocation has sold or discarded any premises, plant or machinery which were used or employed in such trade, business, profession or vocation, the loss attributable to the excess of the written-down value over the sum, if any, realized by the sale thereof or recoverable under any insurance or indemnity or likely to be realized by the sale thereof:

Provided that—

- (i) any corresponding profit shall be treated as a receipt of the trade, business, profession, vocation or employment;

- (ii) where the loss so incurred is such that it cannot be wholly set off against the total income of the year or that of the preceding year under the provisions of paragraph (l) of this sub-section, it shall to that extent be set off against the total income of the year next preceding and then against the total income of the year next preceding that year and where any tax has been overpaid it shall, notwithstanding the provisions of section 63 of this Ordinance, be repaid;
- (iii) when such premises, plant or machinery were only partly used or employed in such trade, business, profession or vocation, the deduction or addition under this paragraph shall be proportionately reduced;
- (iv) where any such premises, plant or machinery purchased prior to the first day of January, 1937, and used in a trade, business, profession or vocation carried on in the Colony were replaced the written-down value shall be calculated by reference to the wear and tear which has taken place since that date:

Provided further that where the trade, business, profession or vocation was carried on in another East African territory the figures "1939" shall be substituted for the figures "1937" for the purposes of this sub-paragraph:

Provided further that for the purposes of this paragraph and notwithstanding the definition of the term "premises" contained in section 2 of this Ordinance "premises" means any premises being mills, factories or other similar premises;

- (d) any sum expended for structural alterations to premises employed in acquiring the income where such expenditure is necessary to maintain the existing rent or annual value and any sum expended for repairs of premises, plant or machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

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Deleted & sub.
by Ord 3/17
p. 4. para 5(a)

Provided that no deduction shall be made for the cost of renewal of any property which has been the subject of a deduction under paragraph (k) of this sub-section;

- (e) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Commissioner to have become bad during the said year notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said year, provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that year;
- (f) any sum contributed by an employer to a pension, saving, provident, or any other society or fund which may be approved by the Commissioner under section 24 of this Ordinance;
- (g) the cost of measures for the prevention of soil erosion;
- (h) the cost of imported cattle, sheep, horses and swine purchased for stud purposes, imported poultry, and such other imported live stock as the Governor in Council may, by notice in the Gazette, declare;
- (i) where the income is derived from an estate either—
 - (i) the amount expended on the clearing and/or planting of such estate and on rotation planting of permanent or semi-permanent crops; or
 - (ii) where a person so elects, such annual sum as to the Commissioner may seem reasonable for the purpose of redeeming the initial cost of clearing the land, planting and maintaining the crop up to and during its productive life;

An election under this paragraph must be made by a person in writing when rendering his first return after the first day of January, 1937, and such election shall be binding upon him in respect of all

subsequent returns until for good and sufficient reasons the Commissioner permits such election to be revoked;

For the purpose of this paragraph "estate" means any area of land used mainly for the purpose of permanent cultivation;

- (j) so much of the price paid for—
- (i) land acquired to cut and sell timber therefrom;
 - (ii) the right to fell timber for sale, as is attributable to the timber felled in the year;
- (k) a reasonable amount for the wear and tear of property, including plant, machinery and premises being mills, factories or other similar premises owned by a person arising out of the use or employment of such property in a trade, business, profession or vocation and, where the income is derived from agriculture, pastoral or other similar operations, property shall include dipping tanks, fencing and other works of a permanent nature for obtaining and/or conserving and/or distributing water (other than for domestic purposes);

Where any such property including plant, machinery or premises being mills, factories or other similar premises is used for the purpose of a trade, business, profession or vocation on such terms that the burden of the wear and tear thereof falls upon the person by whom the trade, business, profession or vocation is carried on, but such property does not belong to him, he shall be entitled to any deduction to which he would have been entitled if such property had belonged to him :

Provided that—

- (i) in no case shall any such deduction be made for the depreciation of any other premises, or other structures of a permanent nature; and
 - (ii) the amount to be deducted in respect of premises, being mills, factories or other similar premises, shall not exceed one per cent of the cost thereof;
- (l) the amount of a loss incurred by him during the year of assessment in any trade, business, profession or vocation, which, if it had been a profit, would have been assessable under this Ordinance :

Provided that no such deduction shall be made unless it is claimed by notice in writing within six months of the end of the year of assessment;

- (m) the amount of a loss similarly incurred by him in any such trade, business, profession or vocation during any of the six years preceding the year of assessment which has not been allowed against his total income of a prior year:

Provided that—

- (i) in no circumstances shall the aggregate deduction from total income in respect of any loss exceed the amount of such loss;
- (ii) a deduction under this paragraph shall be made as far as possible from the total income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then from the total income of the next year of assessment, and so on;
- (iii) where the trade, business, profession or vocation was carried on in the Colony any losses incurred during the years 1932, 1933, 1934 and 1935 shall, after deducting therefrom any profits or gains from any trade, business, profession or vocation made during those years, be deemed to have been a loss incurred in the year preceding the year of assessment commencing on the first day of January, 1937, and where the trade, business, profession or vocation was carried on in another East African territory this paragraph shall apply as if the figures "1934, 1935, 1936, 1937 and 1938" were substituted for the figures "1932, 1933, 1934 and 1935" and the figures "1940" substituted for the figures "1937";
- (iv) where any person proves to the satisfaction of the Commissioner that he is unable to produce any evidence of his profit or loss during the year 1932, the Commissioner shall apply the provisions of this paragraph to such person as if the figures "1932" were deleted therefrom;
- (n) notwithstanding the provisions of paragraph (c) of section 14 of this Ordinance, where the income is

derived from mining operations such deductions in respect of capital expenditure as may be prescribed in lieu of the deductions under the provisions of paragraphs (c) and (k) of this sub-section;

See Ord. 3/47
p. 4 paras (b) } (b) →

(b) ~~for~~ such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

Deductions not to be allowed.

14. For the purposes of ascertaining the total income of any person no deduction shall be allowed in respect of—

- (a) domestic or private expenses;
- (b) any item of expenditure or of charge except so far as it is attributable to, and incurred for, the purpose of acquiring the income;
- (c) any loss, diminution, exhaustion or withdrawal of capital, any sum employed or intended to be employed as capital, or any expenditure for a capital purpose;
- (d) any sum payable by way of interest by any person out of the Colony to another person out of the Colony except where tax has been deducted and accounted for under the provisions of section 29 of this Ordinance;
- (e) any loss or expense which is recoverable under any insurance, contract or indemnity;
- (f) rent of any premises or part of premises not paid for the purpose of producing the income;
- (g) any amounts paid or payable in respect of United Kingdom income tax or surtax, Kenya income tax or Empire income tax as defined in this Ordinance.

Valuation of stock, etc., in the case of a farmer.

(h) added by Ord. 24/43

15. (1) A farmer shall be entitled to the exercise of an option whether the values of live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment shall or shall not be taken into account in the determination of the income derived by him from such operations.

(2) Subject to such adjustment as to the Commissioner may seem to be fair and reasonable in respect of the value of any live stock or produce held by any farmer on the first day of January, 1936 (or where the live stock or produce is

held by a farmer in another East African territory on the first day of January, 1939), or the date upon which he commenced pastoral, agricultural or other similar operations, whichever date is the later, every farmer who elects not to take into account the values of such live stock and produce shall be chargeable in each year of assessment in respect of all amounts whatsoever for which live stock or produce have been disposed of by him or on his behalf during the year preceding a year of assessment:

Provided that when the Commissioner is satisfied that the sale of any stock is in the nature of a capital transaction and that the money received therefrom has been expended in purchasing stock of a different kind or on purposes essential to a change over from one type of such operations to another type of such operations he may exempt the money so received and expended from being taken into account as part of the income of such farmer.

(3) A farmer making his election as in sub-section (2) of this section provided shall furnish to the Commissioner at any time when the Commissioner so requires a statement setting out to the best of his knowledge and belief the value of the live stock and produce held by him on the date specified in that sub-section which is applicable to his case.

(4) The decision as to the basis upon which a farmer elects to be assessed shall be notified by him in writing to the Commissioner when rendering his first return subsequent to the first day of January, 1937, under this Ordinance, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Commissioner may, for reasons which appear to him to be good and sufficient, permit any farmer who has so notified his election to adopt the alternative method in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

(5) A farmer who elects to continue to take into account the value of his live stock and produce shall include in the return rendered by him for income tax purposes the values of all live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment.

(6) The value to be placed upon such live stock and produce shall be such fair and reasonable value as the Commissioner may fix.

Profits of non-resident persons from sale of exported produce.

16. Where a non-resident person carries on in the Colony an agricultural, manufacturing or other productive undertaking and sells any product of such undertaking outside the Colony or for delivery outside the Colony, whether the contract is made within or without the Colony, the full profit arising from the sale in a wholesale market shall be deemed to be income accruing in, or derived from, the Colony:

Provided that if it is shown that the profit has been increased through treatment of the product outside the Colony other than handling, grading, blending, sorting, packing and disposal, such increase of profit shall not be deemed to be income accruing in, or derived from, the Colony. Where any such produce is not sold in a wholesale market, the profit accruing in the Colony shall be deemed to be not less than the profit which might have been obtained if such person had sold such produce wholesale to the best advantage.

17. (1) Notwithstanding anything to the contrary contained in this Ordinance, it is hereby provided that—

Insurance companies other than life insurance companies.

(a) in the case of an insurance company whether mutual or proprietary (other than a life insurance company) where the gains or profits accrue in part outside the Colony the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the Colony (less any premiums returned to the insured and premiums paid on re-insurance), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the year preceding the year of assessment and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the said year and from the net amount so arrived at deducting the actual claims paid or outstanding (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company;

Life insurance companies.

(b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income

less the management expenses (including commission): Provided that where such a company received premiums outside the Colony the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Colony bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company:

Provided that in the case of an insurance company having its head office outside the Colony, the Commissioner may substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the Colony.

(2) In the case of an insurance company resident in the Colony the provisions of sub-section (1) of this section shall apply as if the words "Colony and another East African territory" were substituted for the word "Colony" wherever such word occurs in such sub-section.

18. (1) Subject to the provisions of paragraph (t) of sub-section (1) of section 10 of this Ordinance, where a non-resident person carries on the business of shipowner or charterer and any ship owned or chartered by him calls at a port in the Colony, his full profits arising from the carriage of passengers, mails, live stock or goods shipped in the Colony shall be deemed to accrue in the Colony:

Profits of non-resident ship-owners.

Provided that this section shall not apply to goods which are brought to the Colony solely for transshipment.

(2) Where for any accounting period such person produces the certificate mentioned in the sub-section (3) of this section, the profits arising in the Colony from his shipping business for such period, before deducting any allowance for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, live stock, and goods shipped in the Colony as the ratio for the said period shown by that certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, live stock and goods.

(3) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business, on a basis not materially different from that prescribed by this Ordinance, and shall certify for any accounting period as regards such business—

- (a) the ratio of the profits or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance by way of depreciation, to the total sums receivable in respect of carriage of passengers, mails, live stock or goods; and
- (b) the ratio of the allowance for depreciation as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, live stock and goods.

(4) Where at the time of assessment the provisions of sub-section (2) of this section cannot for any reason be satisfactorily applied, the profits arising in the Colony may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, live stock and goods shipped in the Colony :

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within six years after the end of such year of assessment that his liability to tax for that year be recomputed on the basis provided by sub-section (2) of this section.

(5) Where the Commissioner decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in the Colony is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this section shall not apply to the profits of such ship and no tax shall be chargeable thereon.

Profits of non-resident air transport, cable, etc., undertakings.

19. Where a non-resident person carries on the business of air transport or the business of the transmission of messages by cable or by wireless telegraphy he shall be assessable to tax as if he were a non-resident shipowner as defined in section 18 of this Ordinance and the provisions of the said section shall apply *mutatis mutandis* to the computation of the profits or gains of such business.

1940

Income Tax

No. XI

20. The income of a person arising from a dividend paid by a company liable to tax under this Ordinance, United Kingdom income tax, or Empire income tax within the meaning of sub-section (3) of section 33 of this Ordinance shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

Income from certain dividends to include tax thereon.

21. ~~Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a company controlled by not more than five persons has not distributed to its shareholders as dividend profits made in any period ending after the first day of January, 1936, which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.~~

Certain undistributed profits may be treated as distributed.

All - Salary - Ord. 7/46

22. (1) Where the Commissioner is of the opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly.

Commissioner may disregard certain transactions and dispositions.

In this section "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) Nothing in this section or in section 21 contained shall prevent the decision of the Commissioner in the exercise of any discretion given to him by either such section from being questioned in an appeal against an assessment in accordance with Part XI.

PART VI

PERSONAL DEDUCTIONS

23. The chargeable income of any person for any year shall be his total income for that year subject to the deductions allowed in this Part.

Chargeable income.

24. (1) In the case of an individual resident in the Colony in the year immediately preceding the year of assessment ~~there shall be allowed a deduction of three hundred and~~

Resident.

~~fifty pounds and when any such individual~~ proves to the satisfaction of the Commissioner that in the year immediately preceding the year of assessment—

- Wife. (a) he had a wife or wives living with or wholly maintained by him there shall be allowed a deduction of ~~one~~ hundred and fifty pounds;
- Children. (b) he maintained any child who was either under the age of sixteen or who if over the age of sixteen years at any time within that year was receiving full time instruction at any university, college, school, or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of ~~seventy-five~~ pounds in respect of one such child, and a deduction of ~~sixty~~ pounds in respect of each subsequent child:

Provided that—

- (i) the total deduction to be allowed under this paragraph shall not exceed a total amount of two hundred ~~and fifty-five~~ pounds;
- (ii) no deduction shall be allowed in respect of any child who was entitled in his own right to an income exceeding seventy-five pounds a year in the year preceding the year of assessment other than any sum to which the child was entitled as the holder of a scholarship, bursary or other similar educational endowment;

The expression "child" includes a stepchild or an adopted child who was during the year preceding the year of assessment wholly maintained by the individual;

- Dependants. (c) he at his own expense maintained or contributed to the maintenance of a person being a relative of the individual or of the individual's spouse who was either incapacitated by old age or infirmity from maintaining himself or is the widowed mother (whether so incapacitated or not) of the individual or of the individual's spouse or, where the individual is a widower and has resident with him and maintained by him a female relative of his or his deceased wife in the capacity of a housekeeper, other than a female relative in respect of whom

Q. 26/40

another individual is entitled to a deduction under the provisions of this Ordinance, there shall be allowed a deduction of a sum not exceeding ~~one~~ ^{two} hundred pounds expended as such maintenance:

Provided that the income of the person maintained did not in the year preceding the year of assessment exceed one hundred and fifty pounds:

(d) (i) he shall have made insurance (including insurance against death by accident) on his life or on the life of his wife in any insurance company; or

also see Ord. 2/46
Life insurance, superannuation and provident funds.

(ii) he shall have made annual contributions to a pension, saving, provident or any other society or fund which may be approved by the Commissioner upon such conditions as may be prescribed, there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance and the annual amount of the contribution as aforesaid:

Provided that no such deduction shall be allowed in respect of any such annual amount of premium and/or contribution beyond an amount equal to one-sixth part of his total income: And provided further that the total deduction to be allowed under this paragraph shall not exceed ~~the~~ hundred pounds in amount.

(2) Added by Ord. 26/40

25. In the case of a person who is not resident in the Colony during the year preceding the year of assessment the Governor in Council may make rules for determining—

Non-resident allowances.

(a) what deductions may be allowed from the income of such individual;

(b) the individual or classes of individuals to which any such deductions shall apply.

Attention to Ord. 16/47-101

Any such rules shall be laid before the Legislative Council and shall come into force upon such date as the Legislative Council may, by resolution, appoint.

26. Every person who claims a deduction under this Part shall make his claim on the proper form. Such deduction shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

Proof of claims.

PART VII

RATE OF TAX, RIGHTS OF DEDUCTION, AND ALLOWANCES FROM TAX CHARGED

A—Rate of Tax

Rates of tax.

Repealed & replaced by Ord. 37/41
p. 228
32/49

~~27. (1) The tax upon the chargeable income of any person resident in the Colony, other than a company, shall be charged at the following rates:—~~

- ~~For every pound of the first £700: One shilling;~~
- ~~For every pound of the next £500: One shilling and fifty cents;~~
- ~~For every pound of the next £300: Two shillings;~~
- ~~For every pound of the remainder of the chargeable income: Two shillings and fifty cents.~~

(2) The tax upon the chargeable income of a company resident in the Colony shall be charged at the rate of ~~two~~ ^{three} shillings on every pound of the chargeable income thereof:

Provided that where any such company proves to the satisfaction of the Commissioner ^{under Ord. 36/41} that any dividends have been paid out of such chargeable income an amount equal to such dividends may be charged at a lower rate or not charged with any tax, as the Commissioner shall determine.

~~(3) The tax upon the chargeable income of any person who is not resident in the Colony shall, in the case of a person other than a company, be charged at the rate specified in sub-section (1) of this section and shall, in the case of a company, be charged at the rate specified in sub-section (2) of this section:~~

Provided that where any such person has other income accruing in, derived from, or received in, another East African territory the amount of tax to be charged upon his chargeable income shall be the amount resulting from the last following calculations:—

There shall be calculated—

- (a) the amount of such person's whole income accruing in, derived from, or received in, the Colony and another East African territory;
- (b) the amount of tax which would be charged if such whole income were chargeable with tax under this Ordinance;
- (c) the aggregate of the amount of such person's total income in the Colony, the Tanganyika Territory,

the Uganda Protectorate and the Zanzibar Protectorate but excluding any amount which as upon the calculation of the total income in any such territory results in a loss;

- (d) the amount which results by multiplying the amount of tax arrived at under paragraph (b) of this sub-section by such person's total income and dividing the product by the amount arrived at under paragraph (c) of this sub-section:

Provided that the amount of any loss which has been deducted in arriving at the amount of such person's whole income under the provisions of this sub-section shall be deemed to have been allowed against his total income for the purpose of the provisions of paragraph (m) of sub-section (1) of section 13 of this Ordinance.

27A. Added by Ord. 24/43, p. 58
B—Rights of Deduction of Tax

28. (1) Every company which is resident in the Colony shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company on the income out of which such dividend is paid: Provided that where the tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

Deduction of tax from dividends of companies.

- see B. 4
4. Ord. 26/40

(2) Every such company shall, upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend.

(3) Every company which is resident in the Colony shall, upon payment of debenture interest, deduct therefrom tax at the rate of ~~three~~ shillings on every pound of such interest where payment is made to a company and, in any other case, at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted, and every such amount shall be a debt due from such company to the Government of the Colony and shall be recoverable as such:

Deduction of tax from debenture interest paid by company.

Provided that the Commissioner may give notice in writing to any such company requiring such company to deduct

and account for tax at a lower rate or to pay such debenture interest without deduction of tax.

(4) Every such company shall upon payment of such interest furnish each person to whom such payment is made with a certificate setting forth the amount of the interest paid to him and the amount of tax which the company has deducted from such interest.

(5) The account aforesaid shall be rendered by the manager or other principal officer of the company.

(6) Any such officer of a company who fails or neglects to render an account due or to furnish a certificate under this section shall be guilty of an offence against this Ordinance.

Deduction of
tax from
mortgage
interest.

29. (1) Where any person pays mortgage interest to a person not resident in the Colony or to the agent of such person and is entitled to deduct such interest under section 13 of this Ordinance, he shall, upon paying the interest, deduct therefrom tax at the rate of ~~three~~ shillings on every pound of such interest where payment is made to a ~~company~~ and, in any other case, at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted, and every such amount shall be a debt from him to the Government of the Colony and shall be recoverable as such:

30/41
ord 3/27 p. 10.
para 10 (a)(v)

Provided that the Commissioner may give notice in writing to any such person requiring that person to deduct and account for tax at a lower rate or to pay such interest without deduction of tax.

(2) Any person who fails or neglects to render an account due under this section shall be guilty of an offence against this Ordinance.

(3) The Commissioner shall, upon receipt of any tax deducted from any such interest under the provisions of this section, furnish the person who has deducted and paid the tax with a certificate setting forth the amount of tax so paid and the name of the person on whose behalf it has been paid. It shall be the duty of the person to whom a certificate has been furnished under the provisions of this section forthwith to forward such certificate to the person in whose name and on whose behalf the tax has been paid or to the recognized agent of such person.

1940

Income Tax

No. XI

C—Allowances from Tax Charged

30. (1) Any tax or income tax which a person has deducted or is entitled to deduct under section 28 or section 29 of this Ordinance or of the Tanganyika or Uganda Ordinance or of the Zanzibar Decree from any dividend, debenture, or mortgage interest, shall, where such dividend, debenture or mortgage interest is included in the chargeable income of any person, be set off for the purpose of collection against the tax charged on that chargeable income.

Tax deducted from dividends debenture and mortgage interest.

(2) In the year of assessment commencing on the first day of January, 1940, the chargeable income of any person from any dividend, debenture or mortgage interest to which the provisions of the Tanganyika Ordinance, the Uganda Ordinance or the Zanzibar Decree would have applied had these laws been in force at the time of the payment of such dividend, debenture or mortgage interest, shall be deemed to have borne tax at the rate of three shillings in the pound and such person shall be entitled to the set-off provided by this section:

Provided, however, that in the case of the chargeable income of any person from any debenture or mortgage interest, the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such debenture or mortgage interest were omitted from his chargeable income and no set-off under this section were allowed.

31. Where the Commissioner is satisfied that any individual chargeable with tax for any year of assessment is liable to pay hut tax or poll tax under the Native Hut and Poll Tax Ordinance, 1934, Northern Frontier poll tax under the Northern Frontier Poll Tax Ordinance, 1930, or non-native poll tax under the Non-Native Poll Tax Ordinance, 1936, for the same year of assessment, the amount for which he is so liable or an amount equal to the tax payable on the individual's chargeable income, whichever is the less, shall be deemed to be a payment on account of the tax and shall be set off against the tax charged on the individual's chargeable income:

Repealed by Ord. 3 of 1970 p. 10. para 11.
Set-off of poll tax.

No. 40 of 1934.
No. 53 of 1930.
No. 50 of 1936.

Provided that no deduction in respect of non-native poll tax shall be allowed under this section to an amount in excess of the amount of non-native poll tax fixed in section 3 of the Non-Native Poll Tax Ordinance, 1936.

No. 50 of 1936.

D—Relief in Cases of Double Taxation

Relief in
respect of
United
Kingdom
income tax.

32. (1) Any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax, he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

Provis added by Ord 2/46

(2) For the purposes of this section, a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year, except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

*Replaced by
Ord 2/46*

Relief in
respect of
Empire
income tax.

33. (1) If any person resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the

Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony, the rate at which relief is to be given shall be the Empire rate of tax.
- (b) In any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax.
- (b) If the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of His Majesty's Dominions (other than the United Kingdom or this Colony) or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom: Provided that the legislature of that part, place or territory has provided for relief in respect of tax charged on income both in that part, place or territory and this Colony in a manner which appears to the Commissioner to correspond to the relief granted by this section.

(4) For the purposes of this section, the rate of tax under this Ordinance shall be computed in the manner provided by

sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part, place or territory in which Empire income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

PART VIII

PERSONS ASSESSABLE

A—Husband and Wife

Wife's income
and right to
claim separate
assessment.

34. (1) The income of a married woman living with her husband shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name:

Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bears to the amount of the total income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her.

(2) If either the husband or the wife makes written application therefor to the Commissioner before the 31st day of January in the year of assessment, returns of income may be required to be rendered by any such husband and wife separately, and the amount of tax chargeable on the husband by reason of sub-section (1) of this section shall be apportioned between the spouses in such manner as to the Commissioner appears reasonable, and the amount so apportioned shall be assessed and charged on each spouse separately.

(3) (a) When a married woman is not living with her husband each spouse shall for all the purposes of this Ordinance be treated as if he or she were unmarried.

(b) Any amount payable by way of alimony or allowance under any judicial order or written agreement of separation or under any decree of divorce shall be returned as the separate income of the person to whom it is paid and shall be allowed as a deduction in computing the total income of the person by whom such amount is paid.

(4) For the purposes of this Ordinance a married woman shall be treated as living with her husband unless—

- (i) they are separated under an order of a court of competent jurisdiction or by deed of separation; or
- (ii) they are in fact separated in such circumstances that the separation is likely to be permanent; or
- (iii) she is resident in the Colony and her husband is not resident in the Colony or another East African territory.

B—Trustees, Agents, etc.

35. A receiver appointed by a court, a trustee, guardian, curator, or committee, having the direction, control or management of any property or concern on behalf of any incapacitated person shall be assessable and chargeable to tax in like manner and to the like amount as such person would be assessable and chargeable if he were not an incapacitated person.

Chargeability
of trustees, etc.

36. (1) A person not resident in the Colony (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax in the name of his trustee, guardian, curator, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessable and chargeable if he were resident in the Colony and in the actual receipt of such income:

Chargeability
of agent of
person resident
out of the
Colony.

Provided that in the case of any individual who is not resident in the Colony no deduction shall be allowed under section 24 of this Ordinance.

(2) A non-resident person shall be assessable and chargeable to tax in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the attorney, factor, agent, receiver, branch or manager.

(3) The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of section 18 of this Ordinance shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Ordinance.

(4) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connexion between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connexion with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(5) where it appears to the Commissioner by whom the assessment is made, or to the judge or local committee by whom an appeal is heard, that the true amount of the gains or profits of any non-resident person assessable and chargeable to tax in the name of a resident person cannot in any case be readily ascertained, the Commissioner or judge if he, or a local committee if it, thinks fit, may assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is assessable and chargeable as aforesaid, and in such case the provisions of this Ordinance relating to the delivery of returns or particulars by a person acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged:

Provided that the amount of the percentage shall in each case be determined having regard to the nature of the business; and shall, when determined by the Commissioner, be subject to an appeal as provided by Part XI of this Ordinance.

(6) Nothing in this section contained shall render a non-resident person assessable or chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorized person carrying on the regular agency of the non-resident person, or a person assessable and chargeable as if he were an agent in pursuance of sub-sections (4) and (5) of

this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(7) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him assessable and chargeable in pursuance of sub-sections (4) and (5) of this section in the name of a resident person shall not of itself make him assessable or chargeable in respect of gains or profits arising from those sales or transactions.

(8) Where a non-resident person is assessable and chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the Colony by the non-resident person, the person in whose name the non-resident person is so assessable and chargeable may, if he thinks fit, apply to the Commissioner, or in the case of an appeal to a local committee or the judge, to have the assessment to tax in respect of those gains or profits made or amended on the basis of profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner, local committee or judge of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

37. (1) The person who is assessable and chargeable in respect of an incapacitated person or in whose name a non-resident is assessable and chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts, and for paying the tax chargeable thereon.

Acts, etc., to be done by trustees.

(2) The manager or other principal officer of every corporate body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Ordinance for the assessment of such body and payment of the tax.

Manager of corporate bodies of persons.

38. (1) The Commissioner may by notice in writing, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared the agent shall be the agent of such other person for the purposes of this Ordinance, and may be required to pay any tax due from any

Power to appoint agent.

moneys, including pensions, salary, wages, or any other remuneration, which may be held by him for, or due by him to, the person whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him in the manner provided by section 70 of this Ordinance.

Power to
require
information.

(2) For the purposes of this section the Commissioner may require any person to give him information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any other person.

Appeal.

(3) The provisions of sections 61 and 62 of this Ordinance shall apply *mutatis mutandis* where any person declared by the Commissioner to be the agent of any other person under the provisions of sub-section (1) of this section is aggrieved by such declaration.

Indemnifica-
tion of
representative.

39. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Deceased
persons.

40. When any person dies during the year preceding the year of assessment and such person would but for his death have been chargeable to tax for the year of assessment or when any person dies during the year of assessment or within two years after the expiration thereof and no assessment has been made upon him for that year the personal representative of such person shall be liable to and charged with the payment of the tax with which such person would have been chargeable, and shall be answerable for doing all such acts, matters and things as such person if he were alive would be liable to do under this Ordinance: Provided that in the case of a person dying during the year preceding the year of assessment if his personal representative distributes his estate before the commencement of the year of assessment such personal representative shall pay the tax at the rate or rates in force at the date of distribution of the estate, if the rate of tax for the year of assessment has not been fixed at that date.

Joint trustees.

41. Where two or more persons act in the capacity of trustees of a trust they may be charged jointly or severally with the tax with which they are chargeable, in that capacity, and shall be jointly and severally liable for payment of the same.

C—Partnership

42. Where a trade, business, profession or vocation is carried on by two or more persons jointly— Partnerships.

(1) the income of any partner from the partnership shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership (such income being ascertained in accordance with the provisions of this Ordinance) and shall be included in the return of income to be made by such partner under the provisions of this Ordinance;

(2) (a) the precedent partner, that is to say, the partner who of the partners resident in the Colony—

(i) is first named in the agreement of partnership; or
 (ii) if there be no agreement, is specified by name or initials singly or with precedence to the other partners, in the usual name of the partnership;
 or

(iii) is first named in the statement made under section 5 of the Registration of Business Names Ordinance; or

(iv) is the precedent acting partner if the partner named with precedence is not an acting partner, shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year;

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(b) where no partner is resident in the Colony the return shall be made and delivered by the attorney, agent, manager or factor of the partnership resident in the Colony;

(3) the income of any non-resident partner or partners from the partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in the Colony, and the tax charged thereon shall be recoverable by all means provided in this Ordinance out of the assets of the partnership or from any partner or from any such agent.

PART IX

RETURNS

Notice of chargeability and returns.

43. (1) The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income and such particulars as may be required for the purpose of this Ordinance with respect to the income upon which such person is chargeable.

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(2) Where any person chargeable with tax has not furnished a return within nine months after the commencement of the year of assessment, it shall be the duty of every such person to give notice to the Commissioner that he is so chargeable.

(3) Where a person who is not resident in the Colony has made a return of income chargeable to tax under this Ordinance to the Commissioner of Income Tax for another East African territory, that return shall be deemed to be a return required by this section, and a certificate as to the amount of the income so chargeable issued by or on behalf of such Commissioner of Income Tax shall be receivable in evidence as to the income chargeable.

Commissioner may call for further returns.

44. The Commissioner may give notice in writing to any person when and as often as he thinks necessary requiring him to furnish within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Ordinance.

Power to call for returns, books, etc.

45. For the purpose of obtaining full information in respect of any person's income the Commissioner may give notice to such person requiring him within the time limited by such notice, which time shall not be less than thirty days from the date of service of such notice, to complete and deliver to the Commissioner any return specified in such notice and/or to attend personally before him and to produce for examination any books, documents, accounts and returns which the Commissioner may deem necessary.

Returns to be deemed to be furnished by due authority.

46. A return, statement or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognizant of all matters therein.

47. If a person chargeable with tax fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of income tax, the Commissioner may by notice in writing require him to keep such records, books and accounts in such language as he may in the said notice direct.

Books of account.

48. The Commissioner may require any officer in the employment of the Government of the Colony, or the Kenya and Uganda Railways and Harbours Services, or any local authority or other public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer:

Official information and official secrecy.

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

49. (1) Every employer when required to do so by notice from the Commissioner shall, within the time limited by such notice, not being less than thirty days from the date of service of such notice, prepare and deliver for any year a return containing the names and places of residence and the full amount of remuneration, whether in cash or otherwise, of all persons employed by him.

Obligations of employers.

(2) Where the employer is a body of persons the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company or person engaged in the management of a company shall be deemed to be a person employed.

50. Where any person in any capacity whatever—

- (a) receives any profits or income to which this Ordinance applies which belongs to some other person, or
- (b) pays to some other person, or to his order, any such profits or income,

Return to be furnished of income received on account of, or paid to, other persons.

the Commissioner may give notice to such first-named person requiring him to furnish within the time limited by such notice, not being less than thirty days from the date of service of such notice, a return containing—

- (i) a true and correct statement of all such profits and income; and
- (ii) the name and address of every person to whom the same belongs.

51. The Commissioner may give notice in writing to any person who is the occupier of any land and improvements thereon requiring him to furnish within the time limited by

Occupiers to furnish return of rent payable.

such notice, not being less than thirty days from the date of service of such notice, a return containing—

- (a) the name and address of the owner of such land and improvements; and
- (b) a true and correct statement of the rent payable and any other consideration passing therefor.

Return of
lodgers and
inmates.

52. The Commissioner may give notice in writing to any person requiring him within the time limited by such notice, not being less than thirty days from the date of service of such notice, to furnish a return containing the name of every lodger or inmate who is at the date of the notice resident in his house, hotel or institution, and has been so resident, except for temporary absences, throughout the preceding three months.

Return to be
prepared by
representative
or agent.

53. Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance of or belonging to any other person who is assessable and chargeable in respect thereof, or who would be so assessable and chargeable if he were resident in the Colony and not an incapacitated person, shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period mentioned in such notice, not being less than thirty days from the date of service of such notice, a return signed by him, containing—

- (a) a true and correct statement of such income;
- (b) the name and address of every person to whom the same shall belong.

Signature of
notices.

54. (1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the Commissioner or of such person or persons is duly printed, stamped or written thereon: Provided that any notice in writing under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by any person duly authorized by him.

(2) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

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Income Tax

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PART X

See Sec. 12 of Ord. 3/47

ASSESSMENTS

55. (1) The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return. Commissioner to make assessment.

(2) Where a person has delivered a return, the Commissioner may—

(a) accept the return and make an assessment accordingly; or

(b) if he has reasonable grounds for thinking that the return is not a true and correct return, refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to tax, he may, according to the best of his judgment, determine the amount of the chargeable income of such person, and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

56. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as, according to his judgment, ought to have been charged, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings under this Ordinance shall apply to such assessment or additional assessment and to the tax charged thereunder: *- see the proviso added by Ord. 24/43.* Additional assessment.

57. (1) The Commissioner shall as soon as possible prepare lists of persons assessed to tax. Lists of persons assessed.

(2) Such lists (herein called the assessment lists) shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him, and such other particulars as may be prescribed.

(3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the office of the Commissioner they shall constitute the assessment lists for the purpose of this Ordinance.

Power of
Commissioner
to revise
assessment in
case of
objection.

58. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice addressed to him at his usual place of abode or business stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under the next sub-section.

(2) If any person disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment: Provided that the Commissioner, upon being satisfied that owing to absence from the Colony, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(3) On receipt of the notice of objection referred to in sub-section (2) of this section, the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him, and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise.

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of such amended assessment shall be served personally on or sent by registered post to such person:

Provided always that in the event of any person who, under sub-section (2) of this section, has applied to the Commissioner for a revision of the assessment made upon him

failing to agree with the Commissioner as to the amount at which he is liable to be assessed, his right of appeal under the provisions of this Ordinance against the assessment made upon him shall remain unimpaired.

59. (1) No assessment, warrant or other proceedings purporting to be made in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance or any Ordinance amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

Errors, etc., in
assessment
and notices.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

- (i) the name or surname of a person liable; or
- (ii) the description of any income; or
- (iii) the amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in case of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART XI

APPEALS

60. (1) The Governor may, by notice in the Gazette, appoint for any area specified in such notice a local committee consisting of a president and not more than three other persons, selected by the Governor, for the purpose of hearing and determining appeals in accordance with the provisions of section 61 of this Ordinance.

Establishment
of local
committees.

(2) Every member of a local committee shall hold office during the Governor's pleasure.

(3) The Governor may, without assigning any reason, revoke the appointment of any member of a local committee and he may appoint new members whenever necessary.

(4) Three members of a local committee shall form a quorum for the purpose of carrying out all or any of the

powers conferred upon a local committee by this Ordinance or by any rules made thereunder.

(5) In the unavoidable absence of the president from any meeting the members present shall elect a president for the meeting.

(6) The members of a local committee shall be entitled to receive such subsistence and travelling allowances as the Governor may determine.

(7) The members of a local committee shall not be personally liable for any act or default of such local committee, done or omitted to be done in good faith in the course of the operations of the committee.

(8) The Governor in Council may make rules governing appeals to a local committee and, without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing the manner in which an appeal shall be made to a local committee and the fees to be paid in respect of any such appeal;
- (b) prescribing the procedure to be adopted by a local committee in hearing an appeal and the records to be kept by such committee;
- (c) prescribing the manner in which any such committee shall be convened and the places where and the times at which a local committee shall hold sittings;
- (d) prescribing a scale of costs; and
- (e) generally for the better carrying out of the provisions of this Part relating to local committees.

Appeals to
local committees.

61. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 58 of this Ordinance may, upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired, appeal against such assessment to a local committee appointed for the area in which he resides:

Provided that, notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment if he shows to the satisfaction of the local committee that, owing to absence from the Colony, sickness or other reasonable cause, he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Every person appealing shall appear before the local committee either in person or by agent on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the local committee that, owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the local committee may postpone the hearing of such appeal for such reasonable time as it thinks necessary for the attendance of the appellant.

(3) All appeals to the local committee shall be heard *in camera*.

(4) The local committee shall confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit. Notice of the committee's decision, the date thereof, and of any amendment to the assessment shall be sent to the Commissioner, who shall cause a copy thereof to be served either personally on, or by registered post to, the person appealing together with a notice informing such person of his rights under section 62 of this Ordinance.

(5) In the case of a person who has been assessed to pay a total tax of an amount not exceeding two hundred shillings no appeal shall lie from the decision of the local committee under the provisions of section 62 of this Ordinance in respect of the whole or any part of such tax, provided that such person has certified in writing on the notice under sub-section (1) of this section that he desires the decision of the local committee to be final and conclusive.

62. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 58 of this Ordinance, or, subject to the provisions of sub-section (5) of section 61 of this Ordinance, having appealed to a local committee, is aggrieved by the decision of such committee, may appeal against the assessment to a judge upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired or within thirty days after the date of the decision of the local committee, as the case may be:

Appeals to
Supreme Court.

Provided that, notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment

if he shows to the satisfaction of the judge that, owing to absence from the Colony, sickness or other reasonable cause, he was prevented from giving notice of appeal within such period and that there has been no unreasonable delay on his part.

(2) The Commissioner may, subject to the provisions of sub-section (5) of section 61 of this Ordinance, if he is dissatisfied with the decision of a local committee, appeal against the decision to a judge upon giving notice in writing to the other party to the appeal under section 61 of this Ordinance within thirty days after the date of such decision and the provisions of this section so far as they are applicable shall apply to any such appeal by the Commissioner.

(3) Every person appealing shall appear before the judge either in person or by advocate on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the judge that, owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of such appeal for such reasonable time as he thinks necessary for the attendance of the appellant.

(4) Unless rules made hereunder provide a longer period, seven clear days' notice shall be given to the parties of the date fixed for the hearing of the appeal.

(5) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(6) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.

(7) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by the Commissioner either personally on, or by registered post to, the appellant.

(8) All appeals shall be heard *in camera*, unless the judge shall, on the application of the appellant, otherwise direct; but where, in the opinion of the judge, any appeal heard *in camera* should be reported, the judge may authorize publication of the facts of the appeal, the arguments and the decision without disclosing the name of the taxpayer concerned.

(9) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the Registrar of the Supreme Court.

(10) No appeal shall lie from the decision of a judge except on the question of law or of mixed law and fact.

(11) Notwithstanding that an appeal from the decision of the judge has been lodged, tax shall be assessed in accordance with the decision of the judge: Provided that, if the amount of the assessment is altered by the order or judgment of the Court of Appeal or Privy Council, then—

(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the Court of Appeal or Privy Council may order; or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax, except that no penalty shall be due on such arrears under section 67 of this Ordinance.

63. Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under sub-section (4) of section 58 of this Ordinance, or where the amount of such chargeable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such chargeable income:

Assessments
or amended
assessments to
be final.

Provided that nothing in this Part shall prevent the Commissioner from making any refund under the provisions of section 71 of this Ordinance or any assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

64. The Rules Committee established under section 83 of the Civil Procedure Ordinance, 1924, may make rules governing appeals under this Part (other than appeals to a local committee) and providing for the method of tendering evidence and appointing places for the hearing of such appeals and prescribing the fees to be paid on such appeals.

Power to
make rules.
No. 3 of 1924.
Cap. 27.

PART XII

COLLECTION, RECOVERY, AND REPAYMENT OF THE TAX

Procedure in cases where objection or appeal is pending.

65. Collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until such objection or appeal is determined:

Provided that the Commissioner may in any such case enforce payment of that portion of the tax, if any, which is not in dispute.

Time within which payment is to be made.

66. Subject to the provisions of section 65 and of any rules made under paragraph (a) of sub-section (1) of section 5 of this Ordinance, tax shall be payable within forty days after the service of a notice of assessment under section 58 of this Ordinance or by the thirtieth day of September in the year of assessment, whichever date is the later, and that date shall be the due date:

Provided that—

- (a) the Commissioner in his discretion may extend the due date;
- (b) where an instalment of one-half of the tax has been paid on or before the due date and that date is earlier than the thirty-first day of March in the year following the year of assessment, a second such instalment shall be payable not later than the thirty-first day of March in the year following the year of assessment.

Penalty for non-payment of tax and enforcement of payment.

67. (1) Subject to the provisions of sub-section (2) of this section, if any tax is not paid within the period prescribed in section 66 of this Ordinance—

- (a) a sum equal to twenty per centum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
- (b) the Commissioner shall serve a demand note either personally on, or by registered post to, the person assessed, and if payment is not made within thirty days from the date of service of such demand note, the Commissioner may proceed to enforce payment as hereinafter provided:

(c) a penalty imposed under this section shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Ordinance.

(2) The Commissioner may, for any good cause shown, remit the whole or any part of the penalty due under sub-section (1) of this section.

68. (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave the Colony before such tax becomes payable under the provisions of section 66 or section 69 of this Ordinance without having paid such tax he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment unless security for payment thereof be given to the satisfaction of the Commissioner be recovered forthwith in the manner provided by section 70 of this Ordinance.

Payment of tax
by persons
about to leave
the Colony.

(2) If in any particular case the Commissioner has reason to believe that tax upon any chargeable income may not eventually be recovered he may at any time and as the case may require—

(a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within a time to be specified in such notice;

(b) make an assessment upon such person in the amount of the income returned or if default is made in making such return or the Commissioner is dissatisfied with such return in such amount as the Commissioner may think reasonable;

(c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to his satisfaction.

(3) Notice of any assessment made in accordance with the provisions of sub-section (2) of this section shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of sub-section (2) of this section) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in the manner provided by section 70 of this Ordinance.

(4) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under sub-section (2) of this section shall have the rights of objection and appeal conferred by sections 58, 61 and 62 of this Ordinance and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(5) The provisions of sub-section (2) of this section shall not affect the power conferred upon the Commissioner by section 56 of this Ordinance.

Collection of tax after determination of objection or appeal.

69. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within the time specified in section 66 of this Ordinance or within forty days from the service on the person assessed of the notification of the tax payable, whichever date is the later, and if such tax is not paid within such period the provisions of section 67 of this Ordinance shall apply.

Suit for tax by Commissioner.

70. (1) Tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of the Colony.

(2) The Commissioner may appear personally or by an advocate in any suit instituted under this section or on any appeal under this Ordinance.

(3) In any suit under sub-section (1) of this section, the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount unless the defendant or the court requires that the Commissioner shall appear in person.

Refusal of clearance where tax is in arrear.

(4) In addition to any other powers of collection and recovery provided in this Ordinance, the Commissioner may, where the tax charged on the income of any person who carries on the business of shipowner or charterer has been in default for more than three months (whether such person is assessed directly or in the name of some other person), issue to the Commissioner of Customs or other authority by whom clearance may be granted a certificate containing the name or

names of the said person and particulars of the tax in default. On receipt of such certificate, the Commissioner of Customs or other authority shall be empowered and is hereby required to refuse clearance from any port in the Colony to any ship owned wholly or partly or chartered by such person until the said tax has been paid.

(5) No civil or criminal proceedings shall be instituted or maintained against the Commissioner of Customs or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer, or agent to pay harbour dues and charges for the period of detention.

71. (1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates. The Commissioner shall give a certificate of the amount to be repaid, and upon the receipt of the certificate the Accountant General shall cause repayment to be made in conformity therewith: Repayment
of tax.

Provided that no repayment shall be made to a person who is resident in another East African territory of any tax paid by deduction or otherwise in respect of income exempted under paragraph (x) of sub-section (1) of section 10 of this Ordinance.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

(3) Any person who is aggrieved by the decision of the Commissioner as to the amount to be repaid under this section shall have the same right to appeal against such decision as if he were aggrieved by an assessment made upon him.

PART XIII

OFFENCES AND PENALTIES

Penalties for offences.

72. Any person guilty of an offence against this Ordinance or any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any rules made thereunder for which no other penalty is specifically provided shall be liable on conviction before a magistrate of the first or second class to a fine not exceeding ~~fifty~~ ^{one hundred} pounds, and in default of payment to imprisonment for any term not exceeding ~~three~~ ^{two} months.

Penalty for failure to comply with notice.

73. Every person who without sufficient cause—

(a) fails to comply with the requirements of a notice given to him under this Ordinance; or

(b) fails to attend in answer to a notice issued to him under this Ordinance or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence and shall be liable on conviction before a magistrate of the first or second class to a fine not exceeding ~~fifty~~ ^{one hundred} pounds, and in default of payment to imprisonment for any term not exceeding ~~three~~ ^{two} months, and a further fine not exceeding ten shillings for every day during which the default continues after conviction.

Penalty for making incorrect returns, etc.

74. (1) Every person who without reasonable excuse—

(a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or

(b) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

shall be guilty of an offence and shall on summary conviction by a magistrate of the first or second class be liable to a fine not exceeding one hundred pounds and double the amount of tax which has been undercharged in consequence of such incorrect return, or information, or would have been so undercharged if the return or information had been accepted as correct.

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Income Tax

No. XI

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made ~~in~~ ⁱⁿ the year of assessment in respect of or during which the offence was committed ~~or within three years after the expiration thereof.~~

24/43

(3) The Commissioner may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

75. (1) Any person who wilfully with intent to evade or to assist any other person to evade tax—

Penal provisions relating to fraud, etc.

- (a) omits from a return made under this Ordinance any income which should be included; or
- (b) makes any false statement or entry in any return made under this Ordinance; or
- (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Ordinance; or
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
- (e) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance,

shall be guilty of an offence, and shall for each such offence be liable on summary conviction by a magistrate of the first or second class to a fine not exceeding ~~two~~ ^{two} hundred pounds and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding ~~two~~ ^{two} months, or to both such fine and imprisonment.

^{added by Ord. 24/43}
(2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

76. The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any tax for which he is or may be liable.

Tax to be payable notwithstanding any proceedings for penalties, etc.

No. XI

Income Tax

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Prosecution to be with the sanction of the Commissioner.

77. No prosecution in respect of an offence under section 72, section 73, section 74 or section 75 of this Ordinance may be commenced except at the instance of or with the sanction of the Commissioner.

Savings for criminal proceedings.

78. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law for the time being in force in the Colony.

PART XIV

MISCELLANEOUS

Financial provision.

79. A sum equal to the amount by which the amount of tax ultimately paid is increased by the inclusion in the assessment of any income accruing in, derived from or received in, another East African territory shall be divided up and paid to each of the Governments of the Colony, the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate in such proportion as may be mutually agreed upon between such Governments.

Repeal. No. 12 of 1937.

80. The Income Tax Ordinance, 1937, is hereby repealed:

Provided that, notwithstanding such repeal, any tax which would have been leviable under such repealed Ordinance and which has not been collected at the date of commencement of this Ordinance shall be levied and collected in accordance with, and subject to, the provisions of such repealed Ordinance.

First Schedule - Enemy Property. Added by Ord 2/46

Schedule Amended by Ord 3/47 page 10 para 13.

INSERTED by Ord 3/47 p 10

SECOND Schedule - Part I
i. Allowance in respect of expenditure
ii. " " " "
iii. Deductions in respect of mining
iv. Allowances in respect of Capital
v. " " " Scientific
vi. Miscellaneous Provisions.

Third Schedule added by Ord. 69/48

ORDINANCE No. XI of 1940

Assented to in His Majesty's name this twenty-sixth day of April, 1940.

Assented by
Edwin
Ad. 9/40
Ad. 31/41
16/42
12/43

HENRY MOORE,
Governor.

[26TH APRIL, 1940.] Date of assent.

An Ordinance to Provide for the Control of Rentals and Rates of Interest on Mortgages in respect of Dwelling-houses

26th April, 1940

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 Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940. Short title.

2. (1) For the purposes of this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:— Application and interpretation.

"Court" means the Supreme Court and any magistrate holding a Subordinate Court of ~~the First Class~~ *Class by Ord. 37/40, p. 153.* appointed by the Chief Justice to exercise jurisdiction under this Ordinance.

"standard rent" means—

- (i) a rent not exceeding the rent at which the dwelling-house was let on the prescribed date;
- (ii) where the dwelling-house was in existence but was not let on the prescribed date and subsequently is let, a rent calculated at 10 per cent of the ascertained market value of the landlord's interest in the land and the permanent improvements thereon at the prescribed date:

Provided that for the purposes of calculating the rent under this sub-section it shall be assumed that the landlord shall pay—

- (A) the ground rent, if any;
- (B) the premium for insuring against fire risk;
- (C) the original and additional rates and the improvements rate as defined in the Local Government (Rating) Ordinance, 1928, if any;

(D) the cost of repairs and reasonable re-decoration; and

(E) the cost of supervision and collection. Such cost of supervision and collection not, in any event, to exceed 5 per cent of the standard rent;

(iii) where the dwelling-house erected after the prescribed date, the rent at which it was first let:

Provided that where, in any agreement or lease entered into before the prescribed date, there is a provision for an increase in the rent during the term of the agreement or lease, such agreed increase in rent shall be deemed to be part of the standard rent;

“dwelling-house” means any house or part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and garden or other premises within the curtilage of the dwelling-house and where the annual amount of the standard rent does not exceed two hundred pounds;

“standard rate of interest” means, in the case of a mortgage in force on the prescribed date, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

“landlord”, “tenant”, “mortgagee” and “mortgagor” include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

the expression “landlord” also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for the provisions of this Ordinance be entitled to possession of the dwelling-house, and the expressions “tenant” and “tenancy” include sub-tenant and sub-tenancy, and the expression “let” includes sub-let; and the expression “tenant” includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant’s family so residing as aforesaid as may be decided in default of agreement by the Court;

“mortgage” includes a charge under the Registration of Titles Ordinance;

“net annual value” means the rent at which the dwelling-house might reasonably be expected to let from year to year, free of all rates and taxes paid by the tenant, and deducting

therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain it in a state to command such rent;

“prescribed date” means the date set out in the second column of the Schedule to this Ordinance in respect of the area, district or place in which the dwelling-house is situate;

“statutory undertaking” and “statutory duties or powers” include any undertaking, duties or powers, established, imposed or exercised under any order having the force of law.

3. (1) Subject to the provisions of this Ordinance, this Ordinance shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses, or any interest therein, except that it shall not apply—

Application of
Ordinance

- (a) to any mortgage comprising one or more dwelling-houses and other land if the value of such dwelling-houses is less than one-tenth of the value of the whole of the land comprised in the mortgage; or
- (b) to an equitable charge by deposit of title deeds or otherwise.

(2) When a mortgage comprises one or more dwelling-houses and other land, and the value of such dwelling houses is more than one-tenth of the value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and, at the expiration of the said month's notice, this Ordinance shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by the Court.

(3) Where this Ordinance has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Ordinance applies.

(4) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the net annual value thereof, this Ordinance shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Ordinance shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

(5) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling-house shall, for the purposes of this Ordinance, be treated as a part of a dwelling-house let as a separate dwelling.

Restriction
on increasing
rent and
mortgage
interest.

4. Subject to the provisions of this Ordinance, where the rent of any dwelling-house, or the rate of interest on a mortgage, to which this Ordinance applies, has been, since the prescribed date, or is hereafter during the continuancy of this Ordinance, increased, then, if the increased rent exceeds the standard rent by more than the amount permitted under this Ordinance or, as the case may be, if the increased rate of interest exceeds the standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the commencement of this Ordinance, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

Permitted
increases
in rent.

4 A Added by S.N. 509/42, p. 265.
5. (1) The amount by which the increased rent of a dwelling-house may exceed the standard rent shall, subject to the provisions of this Ordinance, be as follows:—

(a) Where the landlord has, since the commencement of this Ordinance, incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on redecoration or repairs (inclusive of structural repairs)), an amount calculated at a rate per annum not exceeding 10 per cent of the amount so expended;

(b) an amount not exceeding any increase in the amount for the time being payable by the landlord in respect

of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the date of commencement of this Ordinance, or, in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter.

(2) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Ordinance, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased; and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Ordinance: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

(3) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

6. (1) Nothing in this Ordinance contained shall be taken to authorize any increase of rent except in respect of a period during which, but for the provisions of this Ordinance, the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage, except in respect of a period during which, but for the provisions of this Ordinance, the security could be enforced.

Limitation as to permitted increase in rent.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four weeks, or, where such

increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable, on conviction by a subordinate court of the first class, to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

(3) A notice served before the commencement of this Ordinance of an intention to make any increase of rent which is permissible only by virtue of the provisions of this Ordinance shall not be a valid notice for the purpose of this section.

Permitted
increase in
rate of
mortgage
interest.

7. The amount, by which the increased rate of interest payable in respect of a mortgage to which this Ordinance applies may exceed the standard rate, shall be an amount not exceeding one per centum per annum: Provided that the rate shall not be increased so as to exceed eight per centum per annum.

Restriction on
right to
possession.

8. (1) No order for the recovery of possession of any dwelling-house to which this Ordinance applies, or for the ejectment of a tenant therefrom, shall be made unless—

- (a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Ordinance) so far as the same is consistent with the provisions of this Ordinance has been broken or not performed; or
- (b) the tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the Court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or
- (c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell

or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession; or

(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bona fide residing, or to reside, with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this sub-section) the Court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or

~~(e) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties of members of the authority or undertaking, and the Court is satisfied as aforesaid as respects alternative accommodation; or~~

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the Court as reasonably sufficient in the circumstances; or

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;

(d) + (e) added by Act 37/41 s. 15 G.
and, in any such case as aforesaid, the Court considers it reasonable to make such an order.

The existence of alternative accommodation shall not be a condition of an order on any of the grounds specified in paragraph (d) of this sub-section—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

- (ii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or
- (iii) where the landlord gave up the occupation of the dwelling-house for the purpose of taking leave outside the Colony and specifically entered into a contract with the tenant to lease such dwelling-house to him for a fixed period not exceeding one year and the landlord wishes himself to re-occupy such dwelling-house immediately upon the termination of the contract.

(2) At the time of the application for or the making of any order for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of such order which has been made, whether before or after the passing of this Ordinance, and not executed, at any subsequent time, the Court may adjourn the application, or stay or suspend execution on any such order, or postpone the date of possession for such period or periods as it thinks fit, and, subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, or mesne profits and otherwise as the Court thinks fit, and, if such conditions are complied with, the Court may, if it thinks fit, discharge or rescind any such order.

(3) An order against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under the provisions of this section shall not affect the right of any sub-tenant, to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under the provisions of this section, or be in any way operative against any such sub-tenant.

(4) Where a landlord has obtained an order for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the Court that the order was obtained by misrepresentation or the concealment of material facts, the Court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by such tenant as the result of the order.

9. It shall not be lawful for any mortgagee under a mortgage to which the provisions of this Ordinance apply, so long as—

Restriction on calling in of mortgages.

- (a) interest at the rate permitted under this Ordinance is paid and is not more than twenty-eight days in arrear; and
- (b) the covenants by the mortgagor (other than the covenants for the repayment of the principal money secured) are performed and observed; and
- (c) the mortgagor keeps the property in a proper state or repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that—

- (i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was, at the commencement of this Ordinance a mortgagee in possession, nor in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and
- (ii) if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the Court that his security is seriously diminished in value or is otherwise in jeopardy, and for that reason it is reasonable that the mortgage should be called in and enforced, the Court may by order authorize him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor, within such time as the Court directs, pays to the mortgagee such portion of the principal sum secured as appears to the Court to correspond to the diminution of the security.

10. (1) A person shall not, as a condition of the grant, renewal or continuance of a tenancy or sub-tenancy, of any dwelling-house, require the payment of any fine, premium or

Restriction on premiums.

other like sum, or the giving of any pecuniary consideration, in addition to the rent; and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the date of the enactment of this Ordinance, the amount or value thereof shall be recoverable by the person by whom it was made or given :

Provided that where any agreement has been made since the said date but before the commencement of this Ordinance for the tenancy of a dwelling-house, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on conviction by a subordinate court of the first class to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Ordinance.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards, of any tenancy.

Limitation on
rent of houses
let furnished.

11. (1) Where any person lets, or has, since the date of the enactment of this Ordinance, let any dwelling-house, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the Court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit in excess of the normal profit as in this section defined, the Court may order that the rent, so far as it exceeds such sum as would yield such normal profit shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the commencement of this Ordinance shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected, from

a similar letting in the period of twelve months ending the 3rd day of September, 1939.

12. Where any person after the commencement of this Ordinance lets any dwelling-house, or any part thereof, at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, is extortionate, then without prejudice to any other remedy under the provisions of this Ordinance, the lessor shall be liable on conviction by a subordinate court of the first class to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent, so far as it exceeds the amount permitted by the last preceding section of this Ordinance, shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Ordinance.

Penalty for excessive charges for furnished lettings.

13(1) A landlord of any dwelling-house shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on conviction by a subordinate court of the first class to a fine not exceeding ten pounds.

Statement to be supplied as to standard rate.
rent

(2) Added by Ord. 16/22/33.
14. (1) Where any sum has, since the prescribed date, been paid on account of any rent or mortgage interest, being a sum which is under the provisions of this Ordinance irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment, or his legal personal representative, by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under the provisions of this Ordinance is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted in three monthly instalments by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee:

Recovery of sums made irrecoverable.

Provided that where the date prescribed in the Schedule to this Ordinance is the 3rd day of September, 1939, the provisions of this sub-section relating to the recovery of sums,

which under the provisions of this Ordinance are recoverable by a tenant or mortgagor, shall apply only in respect of such sums paid on and after the 1st day of January, 1940.

(2) If—

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which under the provisions of this Ordinance is irrecoverable; or

(b) where any such entry has, before the passing of this Ordinance, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on conviction by a subordinate court of the first class, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

Conditions of
statutory
tenancy.

15. (1) A tenant who, under the provisions of this Ordinance, retains possession of any dwelling-house shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Ordinance, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, then notwithstanding the provisions to the contrary of any law in force in the Colony, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not, as a condition of giving up possession, ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this sub-section shall be liable on conviction by a subordinate court of the first class to a fine not exceeding one hundred pounds, and the court by which

37/41.
- see Ruds - S.N. 81/41, p. 299.

Section 15 (b) (1) (a)

- see Procl. 40, p. 550.

Waveta Municipality

- see Procl. 53/41, p. 175

Township of Namugaki - Procl. 66/41, p. 243

Kisumu - Procl. 89/41, p. 327

Nakuru - Procl. 4/42, p. 4.

Kitale - Procl. 13/42, p. 43.

Applied to all areas in the Colony

- Procl. 25/42, p. 175

Eldoret, Nyeri + Karatina

- Procl. 34/42, p. 251

1940

Control of Rentals

No. XII

he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was given, but any such order shall be in lieu of any other method of recovery prescribed by this Ordinance.

(3) Where the interest of a tenant of a dwelling-house is determined, either as the result of an order for possession or ejection, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Ordinance, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

subject to the provisions of this Act
16. The Supreme Court may make such Rules and give such directions as it may think fit for the purpose of giving effect to this Ordinance, and may, by those Rules or directions, provide for any proceedings for the purposes of this Ordinance being conducted so far as desirable in private and for the remission of any fees.

Rules as to procedure.

17. The Governor in Council may, by Proclamation, declare that the provisions of this Ordinance shall apply to any area, district or place in the Colony in respect of premises, where the annual amount of the standard rent does not exceed five hundred pounds, used for business, trade or professional purposes, or for the public service, as it applies to a dwelling-house in that area, district or place, and with effect from the date of such Proclamation, or from a date specified therein, this Ordinance shall be read as though references to "dwelling-house", "house" and "dwelling" included references to any such premises, provided that the Ordinance in its application to such premises shall have effect subject to the following modifications:—

Applicable to business premises.

(a) The following paragraph shall be substituted for paragraph (d) of subsection (1) of section 8 of this Ordinance:—

"(d) The premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the Court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available".

(b) The following paragraph shall be added after paragraph (g) of the same sub-section:—

“(h) The premises are bona fide required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest”;

(c) Paragraph (i) of the same sub-section shall not apply;

(d) Sections 11 and 12 of this Ordinance shall not apply;

Duration of Ordinance.

18. (1) This Ordinance shall continue in force during the war and one year after the end of the war:

Provided that the expiration of this Ordinance or any part thereof shall not render recoverable by the landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was, under this Ordinance, recoverable by him.

(2) The provisions of this Ordinance shall apply to a dwelling-house in an area, district or place the name of which is set out in the first column of the Schedule to this Ordinance and with effect in respect of such area, district or place from such date as the Governor may, by notice in the Gazette, appoint.

Power to add to Schedule.

19. The Governor in Council may, by proclamation, add to the Schedule to this Ordinance, any area, district or place in the Colony and may, in such Proclamation, fix the prescribed date which shall be deemed to form part of the said Schedule.

SCHEDULE

Name of area, district or place	Prescribed date
The Municipality of Nairobi ...	September 3rd, 1939
The Municipality of Mombasa ...	September 3rd, 1939
The Townships of Malakal	1. 1. 40
The Municipality of Nakuru	3. 9. 39
The Townships of Kisumu	3. 9. 39
“ “ “ of Naupaka	1. 6. 40
Ngong - Kikuyu Ward	1. 1. 40
Kitale. —	3. 9. 39
Thika	31. 6. 41
Applied to all areas in the Colony —	
Eldoret, Nyeri & Karatina — see Ord. 34/42, f. 251	31-12-40

ORDINANCE No. XIII of 1940

Assented to in His Majesty's name this twenty-sixth day of April, 1940.

HENRY MOORE,
Governor.

[26TH APRIL, 1940.] Date of assent.

An Ordinance to Amend the Cattle Cleansing Ordinance, 1929

26th April, 1940

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 Cattle Cleansing (Amendment) Ordinance, 1940, and shall be read as one with the Cattle Cleansing Ordinance, 1929, hereinafter referred to as the Principal Ordinance.

Short title.
No. 32 of 1929.

2. Section 2 of the Principal Ordinance is hereby amended—

Amendment of section 2 of the Principal Ordinance.

(a) by deleting the words "to occupy any land" which occur in the third line of the definition of "landowner" contained therein and by substituting therefor the words "or as lessee to occupy any land not less than fifty acres in extent"; and

(b) by deleting therefrom the definition of "tick infestation" and by substituting therefor the following definition—

"'tick infestation' means the presence on any cattle of one or more engorging ticks;"

3. Section 3 of the Principal Ordinance is hereby amended—

Amendment of section 3 of the Principal Ordinance.

(a) by deleting from paragraph (a) thereof the words "and cattle owners" which occur in the third and fourth lines thereof;

(b) by deleting from paragraph (b) thereof all the words which occur after the word "landowners" in the third line thereof and by substituting therefor the words—

"in such cleansing district by publishing a notice specifying the date and place for the holding

of such meeting, and the objects of such meeting. Such notice shall be published in two consecutive issues of the Gazette and in two issues, seven days apart, of a newspaper circulating in such cleansing district not more than thirty and not less than fourteen days before the date of the holding of such meeting, and such publication as aforesaid shall be deemed full and sufficient notice of the holding of such meeting to all landowners in such cleansing district.”;

(c) by deleting paragraph (c) thereof and by substituting therefor the following paragraph—

(c) (i) At such meeting convened as aforesaid the Provincial Commissioner or other officer authorized by him in writing, who shall not vote, shall act as Chairman and shall record the votes of all landowners who are in favour of being brought under the provisions of this Ordinance and all those landowners who are not so in favour.

(ii) Any landowner absent from such meeting may send his vote in writing to reach the Provincial Commissioner in time to be recorded at such meeting and every such vote received by the Provincial Commissioner shall be recorded together with the votes recorded in accordance with the provisions of sub-paragraph (i) of this paragraph.

(iii) At any such meeting no landowner shall have the right to more than one vote.”

(d) by deleting from paragraph (d) thereof the words “two-thirds of the landowners and cattle owners” which occur in the first and second lines thereof and by substituting therefor the words “the landowners”;

(e) by deleting from sub-paragraph (i) of paragraph (f) thereof the words “not fewer than fifteen in number” which occur in the second line thereof; and

(f) by deleting from sub-paragraph (i) of paragraph (f) thereof the words “consultation with the Chief Veterinary Officer” which occur in the seventh line thereof and by substituting therefor the words

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Cattle Cleansing

No. XIII

“receiving from the Chief Veterinary Officer a written statement that, in the opinion of such officer, the area is one which may with advantage be declared a cleansing district.”

4. Sub-section (1) of section 9 of the Principal Ordinance is hereby amended—

Amendment of section 9 (1) of the Principal Ordinance.

(a) by inserting immediately after the word “keep” which occurs in the ninth line thereof the words “in a permanent and legible form”; and

(b) by deleting paragraph (c) and by substituting therefor the following paragraph—

“(c) The number and type of cattle cleaned on each cleansing day, whether bulls, cows, heifers, calves or oxen, belonging to each cattle owner, together with such particulars as to deaths, births, purchases, sales, losses, thefts, transfers or other transactions as will enable an inspector to account for any increase or deficiency.”

5. Sub-section (2) of section 11 of the Principal Ordinance is hereby amended by deleting therefrom the word “period” which occurs in the fifth line thereof and by substituting therefor the words “reasonable period not being less than thirty days.”

Amendment of section 11 (2) of the Principal Ordinance.

6. Paragraph (a) of section 13 of the Principal Ordinance is hereby amended by deleting therefrom the words and figures “1st day of June, 1928” which occur in the last line thereof and by substituting therefor the words “date on which this Ordinance came into operation.”

Amendment of section 13 (a) of the Principal Ordinance.

7. Paragraph (a) of section 18 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor—

Repeal and replacement of section 18 (a) of the Principal Ordinance.

“(a) when a sample of cleaning solution is taken by an inspector from any dipping tank for analysis the following procedure shall be followed—

(i) He shall first notify the owner of such dipping tank of his intention to take such sample.

(ii) He shall divide the sample taken into three parts placing each part in a separate bottle and shall seal and appropriately label each such bottle.

- (iii) He shall deliver one such bottle to the owner, retain one bottle for possible future comparison and shall deliver the third bottle to the analyst who shall analyse the contents thereof and furnish a certificate in the prescribed form of the result of such analysis. A copy of every such certificate so furnished shall be sent to the owner of the dipping tank concerned."
-

Supplement No. 49 (Ordinances No. 3)



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, August 20, 1940

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*Amended by
Ord. 30/40*

ORDINANCE No. XIV of 1940

Assented to in His Majesty's name this twelfth day of August, 1940.

HENRY MOORE,
Governor.

*See Proc. 9/46 of 73 - Toroman in force
with 31/12/47* [12TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the Land and Agricultural Bank Ordinance, 1930 - *in hold. 86/40, 1-593*
12th August, 1940 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 and Agricultural Bank (Amendment) Ordinance, 1940, and shall be read as one with the Land and Agricultural Bank Ordinance, 1930, hereinafter referred to as the Principal Ordinance. Short title.
No. 3 of 1931.

2. (1) Notwithstanding anything to the contrary contained in the Principal Ordinance the Bank may, subject to the provisions of this Ordinance, make advances, whether in a lump sum or by way of payment at regular intervals, for all or any of the following purposes:— Purposes for which advances may be made.

(a) meeting current expenses normally incurred in the production of annual crops. The amount of the advance that may be made to any one farmer for this purpose shall be limited to the actual cost of preparing and fertilizing the land, planting the crop, bringing the crop to maturity and harvesting the crop and shall not, except with the consent of the Governor in Council, exceed £300: *30/40*

Provided that such cost per acre shall not exceed such maximum sum as the Governor in Council may declare, under the provisions of section 3 of this Ordinance, to be the cost per acre in respect of any particular crop for any particular area or district;

(b) meeting current expenses in cultivating, fertilizing, bringing to maturity and harvesting, perennial crops:

Provided that the maximum advance that may be made to any one farmer in any one year for this purpose shall not exceed thirty per centum of the

estimated sale value of the crop. The estimated sale value of any such crop shall be assessed by the ^{Board} Bank after consultation with such person or body of persons as the ^{Board} Bank may think necessary;

~~(c) capital expenditure not exceeding £100, in the case of any one farmer, for the purpose of purchasing live stock or for any other purpose approved by the Bank~~

~~(2) The advances to be made under the provisions of this Ordinance shall not, save in the case of the purposes referred to in paragraphs (c), of sub-section (1) of this section, be used for capital expenditure.~~

(3) Advances for the purposes specified in paragraphs (a) and (b) of sub-section (1) of this section may be made in respect of land already under cultivation, and for replanting land which has been cultivated, or for cultivating new acreages of land owned or occupied by a farmer but which have not, owing to lack of financial resources, yet been cultivated.

Rate of interest.

(4) An advance made under the provisions of this Ordinance shall bear interest at such rate per centum per annum as the Governor in Council may from time to time determine.

Governor in Council may declare cost of production.

3. The Governor in Council may, from time to time by notice in the Gazette, declare for the purposes of paragraph (a) of sub-section (1) of section 2 of this Ordinance what is to be deemed to be the cost per acre of producing any specified crop in any specified area or district within the Colony.

Application for advances.

4. All applications for advances shall be in a form specified by the Bank and shall be addressed to the Secretary to the Bank, and the particulars in every application shall be verified by statutory declaration.

Advance to be charge on produce and land.

5. (1) Subject to the provisions of section 6 of this Ordinance, all moneys advanced under the provisions of this Ordinance, with interest thereon and all charges incidental thereto and to the repayment thereof, shall—

(a) be a charge upon the crops growing or to be grown by the farmer, when reaped or gathered ~~therefrom~~, and upon all farm live stock ordinarily kept by the farmer, including the natural increase thereof, and the produce ^{therefrom:}

~~(b) be a charge upon the land in respect of which the advance has been made but subject to any prior encumbrances.~~

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Land and Agricultural Bank

No. XIV

Board
 (2) The ~~Bank~~ *Board* may, in addition to the charges conferred by sub-section (1) of this section, require the applicant to give to the ~~Bank~~ *Board* such collateral security as the ~~Bank~~ *Board* may think fit.

Collateral security.

Ord. 19/44

6. (1) Where the Bank proposes, under the provisions of this Ordinance, to make an advance to any farmer whose crops growing or to be grown or whose live stock, as the case may be, form the subject of a chattels transfer, or are subject to a statutory or contractual charge, the Bank shall, in writing, advise the grantee, or chargee, as the case may be, and such grantee or chargee shall, if he objects to the proposal, be given an opportunity of being heard before the advance is made.

Bank to advise prior encumbrances.

Board
 (2) If the ~~Bank~~ *Board*, after hearing the objector, is satisfied that it is in the interests of the Colony, the farmer and the grantee, or chargee, as the case may be, that the advance should be made, it may make the advance, and thereupon, notwithstanding any principle of law or equity or statutory provision to the contrary, the advance made by the Bank shall be deemed for all purposes to have priority over all encumbrances:

Ord. 19/44

Provided that the priority conferred by this section shall lie in respect only—

- (a) of the crops and the produce thereof actually growing and to be grown and harvested, the expense of producing which has been met from the advance made under the provisions of this Ordinance;
- (b) of the live stock, the cost of purchasing which, and the natural increase thereof the expense incurred in rearing which, and the cost incurred in deriving any produce therefrom, has been met from the advance made under the provisions of this Ordinance;
- (c) of crops, other than the crops specified in paragraph (a) of this sub-section, growing or to be grown, live stock and the natural increase thereof, other than the live stock and the natural increase thereof specified in paragraph (b) of this sub-section, belonging to the farmer and which are, at the date on which the advance is made under the provisions of this Ordinance, unencumbered either by way of mortgage, chattels transfer or any other statutory or contractual charge, and of the produce derived from any live stock of the farmer irrespective of whether such produce is subject to a prior encumbrance or not.

30/40
 (3) The decision of the ^{Board} Bank under the provisions of this section shall be final ~~and conclusive and shall not be questioned in any court of law.~~

(4) Nothing in this section contained shall be deemed to preclude any prior encumbrancer from agreeing in writing with the Bank that the advance to be made by the Bank shall rank in priority to the security of the encumbrancer.

(5) When a grantee or chargee, as the case may be, has, under the provisions of this section, raised no objection to the Bank making an advance or has voluntarily agreed in writing to waive his right of priority in favour of the Bank, then, if and when the advance made by the Bank has been repaid to the Bank, any movable property which may have formed the security to the Bank for such advance shall be deemed, with effect from the date of such repayment, to be included in any security given to such grantee or chargee, as the case may be, by the grantor or chargor at the time such grantee or chargee, as the case may be, made his advance.

For the purposes of this sub-section the term "movable property" means—

- (a) any live stock which has been purchased with an advance made under the provisions of this Ordinance;
- (b) the natural increase of such live stock and the produce derived therefrom; and
- (c) any farming or agricultural implement, or any other chattel, purchased wholly or partly from an advance made under the provisions of this Ordinance.

Notification
of advances to
Registrars.

7. ~~(1) As soon as possible after the approval of any advance by the Bank the Secretary shall~~

- (a) fill up the notification in ^{the} form in the First 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;}
- (b) fill up the notification in the form in the Second Schedule ^{to this Ordinance and shall sign and forward the same to the Registrar General, who shall forthwith, without charge, register such notification as if such notification were an instrument within the meaning of the Chattels Transfer Ordinance, 1930,}

No. 24 of 1930.

and such notification shall, when so registered, entitle the Bank to all such remedies as are conferred upon a grantee under the provisions of that Ordinance.

(2) Where an advance has been made under the provisions of this Ordinance, the Bank shall cause notice thereof to be published in the Gazette. Such notice shall contain the following details:—

Notice of advance to be published.

- (a) application number;
- (b) the name and address of the farmer to whom the advance has been made;
- (c) the amount of the advance;
- (d) the purpose for which the advance has been made.

8. Notwithstanding any provisions of law or equity to the contrary, immediately upon the making of the advances authorized by this Ordinance, and, after the publication in the Gazette of the notice referred to in sub-section (2) of section 7 of this Ordinance, all persons dealing with the produce of 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 construed to be subject to the charge and priority created by this Ordinance.

Priority of advances.

9. Any farmer who applies any advance made to him under the provisions of this Ordinance to any purposes other than those specified by the Bank, shall be liable, on conviction before a magistrate of the first or second class, to imprisonment for a term not exceeding six months or to a fine of one hundred pounds or to both such fine and such imprisonment.

Misapplication of advances.

10. (1) All crops to be reaped from any land, and all produce derived from such crops, and all farm live stock ordinarily kept on any land and all produce derived therefrom, in respect of which a farmer has obtained an advance ~~under the provisions of this Ordinance~~, shall be dealt with and disposed of as the Bank may direct. The Bank in making any such direction shall have power to direct that the proceeds of the sale of any such crops, produce or live stock shall be paid by the purchaser wholly or in part to the Bank in satisfaction or partial satisfaction of the amount due to the Bank from such farmer. All crops, produce and live stock as aforesaid in respect of which a direction for disposal has been made by the Bank shall, until disposed of, be held in trust for the Governor in Council and managed with due care by the farmer. In the

Wrongful disposal of crops, etc.

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absence of any such direction for disposal as aforesaid all crops, produce and live stock as aforesaid may be dealt with and disposed of by the farmer as he may see fit.

(2) Any farmer who has obtained an advance under the provisions of this Ordinance, and who disposes of any crops, produce or farm live stock as aforesaid, in any manner contrary to the directions of the Bank, shall be liable, on conviction before a magistrate of the first or second class, to imprisonment for a term not exceeding six months, or to a fine of one hundred pounds or to both such fine and imprisonment.

Power to enter premises.

11. Any person duly authorized in writing by the Bank 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 the provisions of 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 live stock and any produce derived therefrom upon such land.

Obstructing Inspectors.

12. Any person who knowingly obstructs any person authorized as aforesaid in any such inspection as is authorized by this Ordinance shall be liable, on conviction before a magistrate of the first or second class, to a fine not exceeding twenty pounds.

13. Duration - Added by Ord. 20/40

FIRST SCHEDULE

Name and Address of Farmer	Name of farm	Land Office number	Amount of advance	Date of advance

SECOND SCHEDULE

Name and Address of Farmer	Name of farm	Land Office number	Purposes for which advance made	Amount of advance	Date of advance

ORDINANCE No. XV of 1940

Assented to in His Majesty's name this sixth day of August, 1940.

HENRY MOORE,
Governor.

[6TH AUGUST, 1940.] Date of assent.

**An Ordinance to Provide for the Raising of
Additional Revenue during the Present War**

6th August, 1940

Ord. 35/41 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 War Taxation (Customs and Excise Duties) Ordinance, 1940. Short title.
2. During the continuance in force of this Ordinance, the Customs Tariff Ordinance, 1930, shall be read as if the Customs duties leviable under the provisions of the said Ordinance were increased in every case by a surcharge of ten per centum of the amount of the duty: Increase of Customs duties. No. 1 of 1930.
 Provided that this section shall not apply to Customs duties payable on any of the articles specified in Class III of the Schedule to the said Ordinance.
3. During the continuance in force of this Ordinance, the Excise Duties Ordinance, 1935, shall be read as if the rates of excise duties specified in the Schedule thereto were increased— Increase of Excise duties. No. 40 of 1935.
 - (a) in the case of sugar (not including jaggery), by a surcharge of Sh. 1/24 per cwt.
 - (b) in the case of tea, by a surcharge of five cents per lb.
4. During the continuance in force of this Ordinance, the Beer Ordinance shall be read as if the duty imposed by section 4 of the said Ordinance were increased by a surcharge of forty cents per imperial gallon of worts produced: Increase of duty on beer. Cap. 100.
 Provided that in calculating the quantity of worts produced a deduction of ten per centum shall be made in respect of such accidental loss and waste as arises in the brewing of beer.
5. This Ordinance shall continue in force until the 31st day of December next following such date as the Governor may by proclamation declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end. Duration.

ORDINANCE No. XVI of 1940

Assented to in His Majesty's name this sixth day of August, 1940.

HENRY MOORE,
Governor.

[6TH AUGUST, 1940.] Date of assent.

**An Ordinance to Amend the Dangerous Petroleum
Tax Ordinance**

6th August, 1940

18/41

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 Dangerous Petroleum Tax (Amendment) Ordinance, 1940, 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.

Short title.

Cap. 54.

2. Section 3 of the Principal Ordinance, as replaced by the Dangerous Petroleum Tax (Amendment) Ordinance, 1936, shall be read as if the words "sixth day of August, 1940," were substituted for the words "first day of January, 1937," which appear in the first line thereof, and as if the words "forty-nine" were substituted for the words "twenty-seven" which appear in the fourth line thereof.

Amendment of section 3 of the Principal Ordinance. No. 48 of 1936.

3. This Ordinance shall continue in force until the 31st day of December next following such date as the Governor may, by proclamation, declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end.

Duration.



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, August 27, 1940

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Replaced by
Ord. H.C. Act 6/1940
115

ORDINANCE No. XVII of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

**An Ordinance to Provide for Certain Matters
Relating to the Kenya Royal Naval Volunteer Reserve**

By Notice 20th Aug. 1940

Date of commencement.

WHEREAS by the Colonial Naval Defence Act, 1931 (21 Geo. 5 Ch. 9) it is provided that the legislature of any Colony may, with the approval of His Majesty in Council, make provision, either in conjunction with any other Colony or not, for maintaining vessels of war: and that where the legislature of any Colony has made provision for raising a force for the naval defence of the Colony within its territorial waters, that legislature may, with the approval of His Majesty in Council, further make such provision regarding the discipline and service of officers and men of that force as is contained in this Ordinance:

AND WHEREAS by the said Act it is further provided that His Majesty in Council may, on such conditions as he thinks fit, authorize the Admiralty to accept any offer made by the Government of a Colony to place at His Majesty's disposal for general service in the Royal Navy, vessels of war maintained, or officers or men of such force as aforesaid raised, by the Colony:

AND WHEREAS by the Kenya Naval Volunteer Ordinance, 1940, provision has been made for the raising and maintaining of a force for the Naval Defence of the Colony called the Kenya Naval Volunteer Force:

No. 2 of 1940.

AND WHEREAS by an Order of His Majesty in Council dated the 19th day of March, 1940, approval has been given to the making by the legislature of the Colony of provision as aforesaid:

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 Kenya Naval Volunteer and Defence Ordinance, 1940, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title and commencement.

- Interpretation. **2.** In this Ordinance "the Force" means the Kenya Naval Volunteer Force established under the provisions of the Kenya Naval Volunteer Ordinance, 1940.
- No. 2 of 1940.
- Vessels of war. **3.**(1) The Governor in Council may provide, either in conjunction with any other Colony or not, for maintaining and using vessels of war.
- (2) The Governor in Council may, by agreement with such other Colony, if any, offer to place at His Majesty's disposal for general service in the Royal Navy any vessel of war so provided.
- Service and training outside the Colony. **4.** Officers and men of the Force shall be liable to service and training in any ship, establishment or other place without the limits of the Colony or its territorial waters, whether belonging to the Colony or not.
- Enactments and regulations in force in Royal Navy to apply to the Force. **5.** All the enactments and regulations for the time being in force for the enforcement of discipline in the Royal Navy shall apply to the officers and men of the Force during such period as they are under instruction, training or exercise or in actual service, whether ashore or afloat or within or without the limits of the Colony.
- Entry for service with Royal Navy in emergency. **6.** All or any of the officers and men of the Force may be entered on express terms of accepting general service in the Royal Navy in emergency, and officers and men so entered shall form part of the Royal Naval Volunteer Reserve under the designation of the Kenya Royal Naval Volunteer Reserve.
- General service of the Kenya Naval Volunteer Force in the Royal Navy. **7.** The Governor in Council may offer to place at His Majesty's disposal for general service in the Royal Navy such officers and men of the Force as have been entered on terms of accepting such service.
-

ORDINANCE No. XVIII of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the Education Ordinance, 1931

20th August, 1940

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 Education (Amendment) Ordinance, 1940, and shall be read as one with the Education Ordinance, 1931, hereinafter referred to as the Principal Ordinance.

Short title.
No. 2 of 1931.
2. Paragraph (c) of sub-section (1) of section 34 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor:—

Amendment of section 34 (1) of the Principal Ordinance.

“(c) If, in the case of any private school for the education of Africans, it appears to the Director on the report of an inspector, or of a person specially authorized or from his own inspection either that the curriculum approved as required by section 33 (1) (c) of this Ordinance is not being effectively applied or that the school is not being properly conducted, he may give notice to the manager ordering such alteration in the conduct of the school as he may think necessary to be made within a time fixed by such order and if the same be not made to his satisfaction within the time specified he may, after consulting the District Education Board appointed under the District Education Boards Ordinance, 1934, or if there be no such Board, after consulting the Advisory Council on African Education, order such school to be closed.”

No. 38 of 1934.
3. Sub-section (2) of section 34 of the Principal Ordinance is hereby amended—

Amendment of section 34 (2) of the Principal Ordinance.

 - (a) by substituting a semi-colon for the comma which occurs at the end of paragraph (c) thereof, and by adding, immediately after such semi-colon, the word “or”; and
 - (b) by deleting the words “shall be guilty of an offence and shall be liable on conviction to a fine not exceed-

ing fifty pounds" which occur in the eleventh and twelfth lines thereof and by substituting therefor the following:—

"(d) shall without permission of the Director take part in the management, control or conduct of any school ordered to be closed under the provisions of this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds, and in default of payment to imprisonment for a period not exceeding three months."

Amendment of
the Principal
Ordinance.

4. The Principal Ordinance is hereby amended by the insertion of the following section immediately after section 34 thereof:—

Establishment
of private
schools.

"34A. (1) No private school shall be established without the prior consent of the Director.

(2) Every application for the establishment of a private school shall be made in the prescribed manner.

(3) The Director may in his discretion refuse any such application if it appears to him that there is good and sufficient reason for so doing.

(4) In the event of the Director refusing any such application, an appeal shall lie within sixty days to the Governor in Council, whose decision shall be final.

(5) Nothing in this section contained shall be deemed to relieve any person from the necessity of complying with the provisions of any other law for the time being in force in the Colony with regard to the establishment of such private school.

(6) Any person who establishes a school in contravention of the provisions of this section, and any person who takes part in the management, control or conduct of any school so established, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months."

Amendment of
section 46 of
the Principal
Ordinance.

5. Section 46 of the Principal Ordinance is hereby amended by substituting a semi-colon for the full stop which occurs at the end thereof and by adding immediately after such semi-colon the following paragraph:—

"(f) prescribing the manner in which applications for the establishment of private schools shall be submitted."

ORDINANCE No. XIX of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the District Education Boards Ordinance, 1934

20th August, 1940

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 District Education Boards (Amendment) Ordinance, 1940, and shall be read as one with the District Education Boards Ordinance, 1934, hereinafter referred to as the Principal Ordinance.

Short title.
No. 38 of 1934.

2. Section 7 of the Principal Ordinance is hereby amended:—

Amendment of section 7 of the Principal Ordinance.

(a) by substituting the following paragraph for paragraph (a) thereof:—

“(a) making recommendations for the establishment of elementary and sub-elementary schools and of private schools of whatever classification and for such financial provision as may be necessary in the case of elementary and sub-elementary schools;”

(b) by substituting the following paragraph for paragraph (b) thereof:—

“(b) the supervision, in accordance with such regulations as may from time to time be made by the Director, of the working and management of elementary and sub-elementary schools and of private schools of whatever classification;”.

3. Section 8 of the Principal Ordinance is hereby amended by substituting the words “establishment and supervision of such schools as are referred to in section 7 of this Ordinance” for the words “supervision and management of elementary and sub-elementary schools” which occur in paragraph (a) thereof.

Amendment of section 8 of the Principal Ordinance.

ORDINANCE No. XX of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the Native Authority Ordinance, 1937

20th August, 1940

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 Authority (Amendment) Ordinance, 1940, and shall be read as one with the Native Authority Ordinance, 1937, hereinafter referred to as the Principal Ordinance. Short title.
No. 2 of 1937.
2. Section 9 of the Principal Ordinance is hereby amended— Amendment of section 9 of the Principal Ordinance.
- (a) by deleting the word "and" which occurs at the end of paragraph (j) thereof;
- (b) by inserting, immediately after paragraph (j) thereof, the following new paragraph:—
- “(k) requiring able-bodied adult male natives to work for any purposes declared to be minor communal purposes under paragraph (m) of sub-section (1) of section 23 of this Ordinance: ~~and~~”;
- and
- (c) by relettering the present paragraph (k) thereof as paragraph (l).
3. Sub-section (1) of section 12 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:— Repeal and replacement of section 12 (1) of the Principal Ordinance.
- “(1) Whenever a provincial commissioner finds that any native, being a member of a tribe or community for the use and enjoyment of which land has, under the provisions of any law for the time being in force in the Colony, been reserved, is, otherwise than by virtue of a Provincial Commissioner may order natives to remove to land reserved for them.

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valid contract or other lawful authority, cultivating or occupying any land outside the lands so reserved, whether the land cultivated or occupied is within or without lands reserved for natives, such provincial commissioner may order such native to remove from such land on to land reserved for the use and enjoyment of the tribe or community to which such native belongs."

Amendment of section 24 of the Principal Ordinance.

4. Section 24 of the Principal Ordinance is hereby amended by inserting therein, immediately after sub-section (3) thereof, the following new sub-section:—

"(4) When any resolution has been passed under the provisions of this section and has been submitted to, and approved by, the Governor in Council, any native who is liable to pay the local native rate and who fails to pay such rate shall be guilty of an offence and shall, on conviction by a magistrate or a native tribunal, be ordered to pay such rate together with such court costs, not exceeding one shilling, as the magistrate or native tribunal may, in his or its discretion as the case may be, determine, and in default of payment may be sentenced to imprisonment or detention for a term not exceeding two months.

Any rate or costs recovered under the provisions of this section shall be paid to the Local Native Fund concerned."

Amendment of section 25 of the Principal Ordinance.

5. Section 25 of the Principal Ordinance is hereby amended—

(a) by deleting therefrom the words "any such resolution" which occur in the first line of sub-section (2) thereof and by substituting therefor the words "any resolution passed under the provisions of section 23 of this Ordinance"; and

(b) by repealing sub-section (3) thereof.

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ORDINANCE No. XXI of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the European Officers Pensions Ordinance, 1927

20th August, 1940

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 Pensions (War Service) Ordinance, 1940, and shall be read as one with the European Officers Pensions Ordinance, 1927, hereinafter referred to as the Principal Ordinance. Short title.
No. 11 of 1927.

2. Where a European officer shall have served with His Majesty's Forces in time of war, with the approval of the Governor of the territory in the service of which he was last employed before so serving or of the Secretary of State, the following provisions shall have effect:— War service to count for pension purposes.

(1) during the period of such service in His Majesty's Forces, including any period after the termination of the war (in this section referred to as "military service"), he shall be deemed, for the purposes of the Principal Ordinance, to have been on leave on full salary from the public service in which he was last employed, and to have held the substantive office last held by him in that service, prior to military service;

(2) during any period between his leaving the public service for the purpose of serving in His Majesty's Forces and the date of his commencing military service, he shall, for the purposes of the Principal Ordinance, be deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he was last employed and to have held the substantive office last held by him in that service, prior to military service; and during any period between the termination of his military service and the date of his re-entering the public service he shall, for the said purposes, be deemed to be on leave as aforesaid from the service, and to have held the substantive office, in which he is re-employed:

Provided that—

- (a) this section shall not apply when either period mentioned in paragraph (2) of this section exceeds three months, or such longer period as the Governor, with the approval of the Secretary of State, may in any special case determine; or if the officer fails, after serving with His Majesty's Forces, to re-enter the public service otherwise than in circumstances in which he would be permitted, under the law applicable to the public service in which he is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of three months, or such longer period as may be determined as aforesaid after the termination of his military service;
- (b) if during any period mentioned in paragraph (1) of this section the officer shall have qualified for pension, or received emoluments in lieu of pension rights, actually in respect of military service, paragraph (1) of this section shall, as respects that period, have effect as if the words "leave without salary not granted on grounds of public policy" were substituted for the words "leave on full salary";
- (c) if during his military service the officer shall be injured or killed he shall not, for the purposes of section 19 of the Principal Ordinance and Regulation 13 of the European Officers Pensions (Consolidation) Regulations, 1930, be deemed to have been injured or killed in the discharge of his duty;
- (d) the provisions of this section which require that the officer shall be deemed to have held a specified office and to have been on leave from a specified service shall not apply in respect of any period during which he shall actually have held any other substantive office and have been on leave from any public service;
- (e) save where in any particular case the Governor otherwise directs, this section shall not apply where the office in the public service last held by the officer prior to military service was not a pensionable office.

ORDINANCE No. XXII of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to make certain necessary Amendments to the Indian Acts as applied to the Colony

20th August, 1940

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 Applied Indian Acts (Amendment) Ordinance, 1940. Short title.

2. Where any Indian Act applied to the Colony assigns to the authorities or officers in the first column of the following table any jurisdiction, powers or duties, such jurisdiction, powers or duties shall be exercised by the corresponding authorities and officers specified in the second column of the said table:— Authorities substituted for authorities mentioned in Indian Acts.

India	Kenya
1. Governor General in Council, Governor in Council or Lieutenant Governor in Council ..	Governor in Council
2. Governor General, Governor or Lieutenant Governor	Governor
3. Local Government	Governor
4. High Court or District Court	Supreme Court of Kenya
5. Chief Controlling Revenue Authority	Commissioner of Inland Revenue or such other officer as the Governor may by order appoint for the purpose of any such applied Act
6. Commissioner	Provincial Commissioner
7. Collector, Deputy Commissioner or District Officer	District Commissioner
8. Assistant Collector or Assistant Commissioner	District Officer

3. Where any Indian Act is applied to the Colony such Act shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to make the same applicable to the circumstances. Indian Acts to be read with necessary modifications.

ORDINANCE No. XXIII of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to make such special provision with respect to Patents, Registered Designs, Copyright and Trade Marks, as is expedient to meet any emergency which may arise as a result of war.

3rd September, 1939

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 Patents, Designs, Copyright and Trade Marks (Emergency) Ordinance, 1940, and shall be deemed to have come into operation on the 3rd day of September, 1939.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“copyright” has the meaning assigned to it by the Copyright Act, 1911;

1 and 2
Geo. 5, c. 46

“design”, “invention”, “patent”, and “patentee”, have the meanings assigned to them respectively by the Patents and Designs Act, 1907;

7 Edw. 7,
c. 29.

“enemy” and “enemy subject” have the meanings respectively assigned to them by the Trading with the Enemy Ordinance, 1939;

No. 21 of 1939.

“Imperial Act” means the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939;

2 and 3
Geo. 6, c. 107.

“the Registrar” means, in relation to patents, the Registrar of Patents, and in relation to trade marks, means the Registrar of Trade Marks.

(2) References in this Ordinance to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including, except where the context otherwise requires, this Ordinance.

Provisions as to existing licences under patents, designs and copyright of enemies and enemy subjects, and as to contracts relating thereto.

No. 21 of 1939.

3. Notwithstanding the provisions of section 3 of the Trading with the Enemy Ordinance, 1939, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, a licence under a patent or for the application of a registered design or granting an interest in a copyright, being a licence which would have been in force in favour of a person resident in the Colony if neither the proprietor of the patent or registered design, or the owner of the copyright, as the case may be, nor any person otherwise interested therein, had been an enemy, shall not be invalid by reason of the fact that the proprietor or owner or any person otherwise interested therein is an enemy, nor shall any contract, in so far as it relates to any such licence as aforesaid, be invalid by reason of the fact that any party to the contract is an enemy:

Provided that nothing in this section shall—

- (a) render valid a grant or an assignment of any such licence as aforesaid, or any contract relating to any such licence, if that grant, assignment or contract is made during the existence of a state of war and is unlawful by virtue of any provision of the said section 3 or of any such rule as aforesaid; or
- (b) authorize the performance of any contract relating to any such licence as aforesaid in a manner inconsistent with any of the provisions of the Trading with the Enemy Ordinance, 1939, or of any other enactment relating to intercourse or dealings with or for the benefit of enemies, or to the property, rights, or capacity of enemies, or in a manner inconsistent with any rule of law relating to any of those matters.

No. 21 of 1939

Extension to the Colony of orders under Imperial Act.

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4. (1) Every order made under section 2 of the Imperial Act ~~shall extend to the Colony~~; and every such order granting a licence shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting the licence which the patentee, the proprietor of the registered design, or the owner of the copyright, as the case may be, and all other parties having any interest therein, had executed with full capacity so to do, and the order shall accordingly operate to take away from any such party any right in relation thereto the exercise whereof would be inconsistent with the exercise of the licence in accordance with and subject to the terms on which it is granted.

(2) A licensee under a licence granted under section 2 of the Imperial Act, may institute proceedings for infringement in his own name as though he were the patentee, the proprietor of the registered design or the owner of the copyright, as the case may be, so, however, that any person other than an enemy who, whether alone or jointly with any other person, is the patentee, the registered proprietor of the registered design, or the owner of the copyright, as the case may be, shall, unless the court in which the proceedings are taken thinks fit to direct otherwise, be made a party to the proceedings, either—

- (a) if he consents in writing thereto, as a plaintiff; or
- (b) if he does not so consent, as a defendant.

Where any person is made defendant to any proceedings by virtue of this sub-section, he shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

5. (1) Where it is made to appear to the Registrar that it is difficult or impracticable to describe or refer to an article or substance without the use of a trade mark registered in respect of that article or substance, being a trade mark which is, or has at any time since the beginning of the third day of September nineteen hundred and thirty-nine been registered in the name of an enemy or an enemy subject, whether alone or jointly with another, or which is, or has at any such time as aforesaid been, in the proprietorship of an enemy or an enemy subject, whether alone or jointly with another, the following provisions of this section shall have effect.

Power of Registrar to suspend trade mark rights of an enemy or enemy subject.

(2) On the application of any person who proposes to deal in the course of trade in the Colony with an article or substance which is or is intended to be the same as, or equivalent to or a substitute for, the article or substance in respect of which the trade mark is registered, the Registrar may order that the right to the use of the trade mark given by the registration thereof shall be suspended:—

- (a) so far as regards use thereof by the applicant and any such use thereof by any other person in relation to goods connected in the course of trade with the applicant as would not be an infringement of the said right if the applicant were the proprietor of the trade mark;
- (b) to such extent and for such period as the Registrar may consider necessary for enabling the applicant

to render well-known and established some description of, or means of reference to, the article or substance with which he proposes to deal in the course of trade, being a description or means of reference which does not involve the use of the trade mark.

(3) Where an order has been made under the last foregoing sub-section, no action for passing off shall lie on the part of any person interested in the trade mark in respect of any use thereof which, by virtue of the order, is not an infringement of the right to the use thereof given by the registration thereof.

(4) An order under this section may be varied or revoked by a subsequent order made by the Registrar.

Effect of war
on registration
of patents and
trade marks.
No. 21 of 1939.

6. (1) Notwithstanding the provisions of section 3 of the Trading with the Enemy Ordinance, 1939, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, it shall be lawful, subject to the provisions of this Ordinance—

No. 56 of 1933.

(a) for a patent to be registered under the Registration of Patents Ordinance, 1933; or

No. 35 of 1930.

(b) for a trade mark to be registered under the Trade Marks Ordinance, 1930,

on the application of an enemy:

Provided that, where such a registration as aforesaid is effected on the application of an enemy—

(i) the person registered shall not be entitled to require the issue of the certificate of registration; and

(ii) the rights conferred by the registration shall be subject to any relevant provisions of any enactment for the time being in force relating to the property of an enemy.

(2) The Registrar may, in any case in which in his opinion it is desirable in the public interest so to do, refuse to take, or suspend the taking of, any proceedings on or in relation to an application of an enemy for the registration of a patent or of a trade mark.

No. 21 of 1939.

(3) No act requisite for enabling such a registration as aforesaid to be effected, in so far as it is done for that purpose and for that purpose only, shall, whether the registration is effected or not, be treated as a contravention of any of the provisions of section 3 of the Trading with the Enemy Ordinance, 1939, or of any rule of law relating to intercourse or dealings with or for the benefit of enemies.

(4) References in this section to an application of an enemy shall be construed as including references to an application of an enemy jointly with any other person, whether an enemy or not, and in the case of an application for registration of a patent, to an application made in respect of an invention communicated by an enemy.

7. (1) When His Majesty is at war with a country in respect of which there was in force immediately before the commencement of the war an Order in Council made by His Majesty under section twenty-nine of the Copyright Act, 1911, then, unless and until the Order in Council is revoked under that Act, it shall be deemed for the purposes of that Act to continue in force, notwithstanding the state of war, subject to any alteration or variation thereof under that Act.

Effect of war on international arrangements as to copyright.

(2) Notwithstanding the provisions of section 3 of the Trading with the Enemy Ordinance, 1939, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, any copyright that would have subsisted under the Copyright Act, 1911, by virtue of such an Order in Council as aforesaid if the owner of the copyright had not been an enemy shall so subsist where an enemy is, whether alone or jointly with any other person, the owner thereof:

No. 21 of 1939.

Provided that, where an enemy, whether alone or jointly with any other person, is the owner of copyright subsisting under the Copyright Act, 1911, the provisions of the Trading with the Enemy Ordinance, 1939, and of any other enactment relating to intercourse or dealings with or for the benefit of enemies, or to the property, rights, or capacity of enemies, and any rule of law relating to any of those matters, shall, as respects that enemy, have effect in relation to the copyright so subsisting.

No. 21 of 1939.

8. (1) The Registrar may, subject to such conditions, if any, as he thinks fit to impose, extend the time limited by or under the Registration of Patents Ordinance, 1933, the Trade Marks Ordinance, 1930, or this Ordinance, for doing any act, where he is satisfied—

Power of Registrar to extend time limits having regard to war circumstances.
No. 56 of 1933.
No. 35 of 1930.

(a) that the doing of the act within the time so limited was prevented by a person's being on active service or by any other circumstances arising from the existence of a state of war which, in the opinion of the Registrar, justify an extension of the time so limited; or

(b) that, by reason of circumstances arising from the existence of a state of war, the doing of the act within the time so limited would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest.

(2) An extension under this section of the time for doing any act—

(a) may be for any period that the Registrar thinks fit, notwithstanding that by or under any enactment in the said Ordinances power is conferred to extend the time for doing that act for a specified period only; and

(b) may be granted notwithstanding that that time expired before any application or request for extension was made, or that, by reason of that act not having been done within that time, the relevant application, patent, registration or proceeding has ceased or expired, or become void or invalid, or been treated as abandoned.

(3) The powers conferred by this section may be exercised notwithstanding that the exercise thereof benefits, whether directly or indirectly, an enemy or an enemy subject.

Evidence relating to nationality and place of residence, and decisions relating to enemy character.
No. 56 of 1933.
No. 35 of 1930.
No. 21 of 1939.

9. For the purposes of this Ordinance—

(a) the fact that the address of any person registered in any register kept under the Registration of Patents Ordinance, 1933, or in the register of trade marks kept under the Trade Marks Ordinance, 1930, is an address in enemy territory within the meaning of the Trading with the Enemy Ordinance, 1939, shall be *prima facie* evidence that that person is resident in that territory; and

(b) the fact that in any such register a person is stated to be of a particular nationality shall be *prima facie* evidence that he is of that nationality.

Rules and fees.

10. (1) The Governor in Council may make rules for regulating the practice under this Ordinance, including rules providing for oppositions and rules regulating the service of documents and the time within which any act authorized or required by this Ordinance or the rules may or must be done.

(2) There shall be paid in respect of applications and other matters under this Ordinance such fees as the Governor in Council may prescribe.

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ORDINANCE No. XXIV of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Provide for Restricting the Alienation of Immovable Property to Enemy Subjects

By Notice *20th Aug. 1940* 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 Alienation of Immovable Property to Enemy Subjects (Restriction) Ordinance, 1940, and shall come into force on such date as the Governor may, by notice in the Gazette, appoint. Short title and commencement.
S.N. 892/40
L. 749.

2. In this Ordinance, unless the context otherwise requires, "enemy subject" means— Definition.

- (a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or
- (b) a body of persons constituted or incorporated in, or under the laws of, any such State.

3. No person shall, except with the consent in writing of the Governor in Council, sell, lease, sublease, assign, mortgage or otherwise by any means whatsoever, whether of a like kind to the foregoing or not, alienate, encumber, charge, or part with the possession of, any immovable property, or of any right, title or interest, whether vested or contingent to, in or over any immovable property, to any enemy subject. Restriction on alienation of immovable property to enemy subjects.

4. Any agreement or contract, for any of the purposes prohibited by section 3 of this Ordinance, which has not been completed and registered before the commencement of this Ordinance shall, unless such agreement or contract has received the consent of the Governor in Council, be deemed void to all intents and purposes. Uncompleted contracts.

No. XXIV*Alienation of Immovable Property***1940**

Registration.

5. No person shall, under any law for the time being in force relating to the registration of documents affecting land, cause to be registered any document which relates to any transaction prohibited by ~~section 3~~ of this Ordinance or deemed to be void under the provisions of section 4 of this Ordinance.

Penalties.

6. (1) Any person who contravenes any of the provisions of this Ordinance, or who attempts or aids or abets the contravention of any of the provisions of this Ordinance, shall be guilty of an offence and shall, on conviction before a magistrate of the first class, be liable to a fine not exceeding £5,000 or to imprisonment for a term not exceeding five years or to both such fine and such imprisonment.

(2) Where any offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Duration of the Ordinance.

7. This Ordinance shall remain in force during the continuance of the present war.

ORDINANCE No. XXV of 1940

Assented to in His Majesty's name this 20th day of August, 1940.

HENRY MOORE,
Governor.

[20TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the Trading in Unwrought Precious Metals Ordinance, 1933

20th August, 1940

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 Trading in Unwrought Precious Metals (Amendment) Ordinance, 1940, and shall be read as one with the Trading in Unwrought Precious Metals Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

Short title.

No. 2 of 1933.

2. Section 15 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 15 of the Principal Ordinance.

“15. Any person who contravenes any provision of this Ordinance for the contravention whereof no penalty is prescribed shall, on conviction, be liable to a fine not exceeding one thousand pounds, or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment, and on the second or any subsequent conviction either to such fine or to imprisonment for any term not exceeding five years, or to both such fine and such imprisonment, and the court may, if it thinks fit, declare that all or any part of any unwrought precious metal, with respect to which the offence was committed, shall be forfeited to the Government.”

Punishment for offences and disposal of unwrought precious metal on conviction.

ORDINANCE No. XXVI of 1940

Assented to in His Majesty's name this twenty-fourth day of August, 1940.

HENRY MOORE,
Governor.

[24TH AUGUST, 1940.] Date of Assent.

An Ordinance to Amend the Income Tax Ordinance, 1940, so as to Provide for the Raising of Additional Revenue during the Present War

1st January, 1940

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 War Taxation (Income Tax) Ordinance, 1940, and shall be read as one with the Income Tax Ordinance, 1940, hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into operation on the 1st day of January, 1940.

Short title and date of commencement.
No. 11 of 1940.

2. Section 24 of the Principal Ordinance shall be read as if—

Amendment of section 24 of the Principal Ordinance.

- (a) the brackets and figure "(1)" were inserted immediately after the figure "24" which occurs in the first line thereof;
- (b) the words "there shall be allowed a deduction of three hundred and fifty pounds and when any such individual" which occur in the third and fourth lines thereof were deleted therefrom and the word "who" were substituted therefor;
- (c) the word "one" which occurs in the third line of paragraph (a) thereof were deleted therefrom and the word "three" were substituted therefor;
- (d) (i) the words "seventy-five" which occur in the eighth line of paragraph (b) thereof were deleted therefrom and the word "eighty" were substituted therefor;
- (ii) the word "sixty" which occurs in the ninth line of paragraph (b) thereof were deleted therefrom and the word "forty" were substituted therefor;
- (iii) the words "and fifty-five" which occur in the third line of sub-paragraph (i) of the proviso to paragraph (b) thereof were deleted therefrom;
- (e) (i) the words "one hundred" which occur in the fourteenth and fifteenth lines of paragraph (c) thereof

were deleted therefrom and the word "sixty" were substituted therefor;

- (ii) a colon were substituted for the semi-colon which occurs at the end of the proviso to paragraph (c) thereof, and the following proviso were added immediately after such colon—

"Provided further that, where two or more individuals jointly maintained any such person as aforesaid, the deduction to be made under this paragraph shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.";

- (f) the word "two" which occurs in the sixth line of the proviso to sub-paragraph (ii) of paragraph (d) thereof were deleted, and the word "one" were substituted therefor;

- (g) the following new sub-section were added thereto:—

"(2) In the case of an individual resident in the Colony in the year immediately preceding the year of assessment, other than an individual to whom paragraph (a) of sub-section (1) of this section applies, there shall be allowed a deduction of two hundred pounds: Provided that, where the total income of such individual, other than an individual to whom paragraph (b) of sub-section (1) of this section applies, exceeds two hundred pounds, the amount of such deduction shall be reduced by one-half of the amount by which the total income exceeds two hundred pounds."

Amendment of section 27 of the Principal Ordinance.

3. Section 27 of the Principal Ordinance shall be read as if—

- (a) the last six lines of sub-section (1) thereof were deleted therefrom and the following words and figures were substituted therefor:—

"Where the chargeable income does not exceed £250: One shilling for every pound thereof; Where the chargeable income exceeds £250: One shilling with the addition of one-tenth of a cent for every pound of the chargeable income in excess of £250 up to a maximum rate of ten shillings for every pound thereof.";

- (b) the word "two" which occurs in the second line of sub-section (2) thereof were deleted and the word "three" were substituted therefor;

Replaced by Ord 2/46

(c) the first six lines of sub-section (3) thereof were deleted therefrom, and the following were substituted therefor:—

“(3) The tax upon the chargeable income of any person who is not resident in the Colony shall, in the case of a company, be charged at the rates specified in sub-section (2) of this section and shall, in the case of a person other than a company, be charged at the following rates:—

Where the chargeable income does not exceed £750: Two shillings for every pound thereof;

Where the chargeable income exceeds £750: Two shillings with the addition of one-tenth of a cent for every pound of the chargeable income in excess of £750 up to a maximum rate of ten shillings for every pound thereof.”

4. Where under the provisions of section 28 or of section 29 of the Principal Ordinance tax has been deducted from debenture, or mortgage, interest paid to a non-resident person since the 1st day of January, 1939, at a rate of less than ~~two~~ shillings on every pound of such interest where the payment has been made to a company, or at a rate of less than two shillings on every pound in any other case, the Commissioner may, by notice in writing, require the person who paid such interest to deduct from any subsequent payment of such interest the amount of tax by which such deductions since that date are less than tax at the rate of ~~two~~ shillings or two shillings on every pound of such interest, as the case may be, and to account for such tax as if it had been deducted under the provisions of section 28 or of section 29 of the Principal Ordinance, as the case may be.

Deduction of tax from debenture or mortgage interest.

5. During the continuance in force of this Ordinance, the operation of section 31 of the Principal Ordinance shall be suspended.

Suspension of section 31 of the Principal Ordinance.

6. Section 2 of the War Taxation Ordinance, 1939, is hereby repealed.

Repeal of section 2 of the War Taxation Ordinance, 1939.

7. This Ordinance shall continue in force until the 31st day of December next following such date as the Governor may, by proclamation, declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end, and shall then expire.

Duration

See Proc. 4/46
24/2/46
Grd. 3/1

Ord. 36/41

Ord. 36/41

delete by Ord 3/47 p. 10 para 11

*Ord. repealed by
Ord. 11/44.*

ORDINANCE No. XXVII of 1940

Assented to in His Majesty's name this twenty-fourth day of August, 1940.

HENRY MOORE,
Governor.

[24TH AUGUST, 1940.] Date of Assent.

An Ordinance to Confer on Courts Certain Powers in Relation to Remedies in Respect of Non-payment of Money and the Non-performance of Obligations (including Powers in Relation to Bankruptcy and Winding-up Proceedings), and to make provision for purposes connected with the matters aforesaid.

By Notice M. No. 1940

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. (1) This Ordinance may be cited as the Courts (Emergency Powers) Ordinance, 1940, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title, commencement and duration.

*S.N. 1084/40
L. 378.*

(2) This Ordinance shall continue in force until such date as the Governor may, by proclamation, declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end.

2. For the purposes of this Ordinance—

Interpretation.

(a) a contract shall be deemed to have been made before the commencement of this Ordinance, if an offer made before the day of the commencement thereof so as to be binding on a contracting party if accepted within a specified period expiring on or after that day, is accepted by the contracting party at any time within that period; and

(b) a person entitled to the benefit of a judgment or order, who issues a bankruptcy notice or presents a bankruptcy petition or a winding-up petition founded on the non-payment of money due under that judgment or order shall be deemed to be proceeding to the enforcement of that judgment or order.

Restriction
on execution
and other
remedies.

3. (1) Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Ordinance) for the payment or recovery of a sum of money:

Provided that nothing in this sub-section shall apply to—

- (a) any judgment for the recovery of damages for tort;
- (b) any judgment or order for the recovery of a debt which has become due by virtue of a contract made after the commencement of this Ordinance;
- (c) any judgment or order under which no sum of money is recoverable otherwise than in respect of costs;
- (d) any order in a matter of bastardy, or any order enforceable as an affiliation order or a maintenance order; or
- (e) any order made either in criminal proceedings or in proceedings for the recovery of a penalty in respect of any contravention of, or failure to comply with, any provisions of an Ordinance.

(2) Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court—

- (a) to proceed to exercise any remedy which is available to him by way of—
 - (i) the levying of distress;
 - (ii) the taking of possession of any property or the appointment of a receiver of any property;
 - (iii) re-entry upon any land;
 - (iv) the realization of any security or the forfeiture of any deposit; or
 - (v) the serving of a demand under paragraph (a) of section 168 of the Companies Ordinance, 1933; or
- (b) to institute any proceedings for foreclosure or for sale in lieu of foreclosure, or take any step in any such proceedings instituted before the commencement of this Ordinance:

Provided that this sub-section shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt, or the performance of an obligation, being a debt or obligation arising by virtue of a contract made after the commencement of this Ordinance and nothing in this sub-section shall affect—

- (a) any power of sale of a mortgagee of land or an interest in land who is in possession of the mortgaged property at the commencement of this Ordinance, or who before the commencement of this Ordinance has appointed a receiver who at the commencement of this Ordinance is in possession, or in receipt of the rents and profits of the mortgaged property;
- (b) any power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the commencement of this Ordinance;
- (c) any right or power of pawnbrokers to deal with pledges; or
- (d) the institution or prosecution of any proceedings for the appointment by the court of a receiver of any property, or for the recovery of possession of land.

(3) Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Ordinance) for the recovery of possession of land in default of payment of rent:

Provided that nothing in this sub-section shall apply to any judgment given or order made in proceedings for the enforcement of a contract made after the commencement of this Ordinance.

(4) If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in sub-sections (1), (2) and (3) of this section, the appropriate court is of opinion that the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances

directly or indirectly attributable to any war in which His Majesty is engaged, the court may refuse leave for the exercise of that right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks proper.

(5) Where a bankruptcy petition has been presented against any debtor, or a winding-up petition has been presented against any company on the ground that it is unable to pay its debts, and the debtor or company proves to the satisfaction of the court having jurisdiction in the bankruptcy or winding-up that his or its inability to pay his or its debts is due to circumstances directly or indirectly attributable to any war in which His Majesty is engaged, the court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

(6) The Governor may by order direct that, in relation to the exercise of any right or power of any person or class of persons having any goods in their custody as bailees to sell the goods by reason of any default in payment of a debt, the restriction imposed by sub-section (2) of this section either shall not apply or shall apply subject to such limitations as may be specified in the order; and any such order shall have effect notwithstanding anything inconsistent therewith contained in any Ordinance other than this Ordinance.

Procedure.

4. (1) The appropriate court for the purposes of any of the provisions of this Ordinance shall be such court as may be designated by rules made by the Chief Justice under this Ordinance, and such rules may designate different courts in relation to different classes of proceedings.

(2) The Chief Justice may also make rules prescribing the manner in which applications under this Ordinance are to be made, and generally for regulating the conduct of proceedings under this Ordinance.

Supplement No. 53 (Ordinances No. 5)



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, September 3, 1940

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*Repealed and replaced by Ord. 42 of 1958***ORDINANCE No. XXVIII of 1940**

Assented to in His Majesty's name this twenty-fourth day
of August, 1940.

HENRY MOORE,
Governor.

[24TH AUGUST, 1940.] Date of assent.

**An Ordinance to Provide for the Exemption of
Soldiers in Respect of Certain Civil Processes**

By Notice 17th Sept. 1940

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 Soldiers (Exemption from Civil Process) Ordinance, 1940, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint.

Short title and
commencement.

*S.N. 339/40
p. 657.*

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

Interpretation.

“officer” means an officer commissioned as such in any of the military units specified in the Schedule hereto, but does not include a warrant officer;

“scheduled unit” means any military unit specified in the Schedule to this Ordinance;

“soldier” means every person, other than an officer, subject to military law during the time that he is so subject, but does not include any member of the Kenya Defence Force who is not engaged on full-time military service.

3. (1) No soldier serving in a scheduled unit shall be liable to be arrested or to be compelled to appear in person before any court of law—

Restriction on
soldier's
liability to
civil process.

(a) on account of any civil debt other than an original debt, proved by affidavit of the plaintiff or of someone on his behalf, to the value of thirty pounds at least over and above all costs of the suit; or

(b) on account of the breach of any covenant, agreement or other engagement; or

x Not in force.

(c) for having left or deserted his employer or master, or his contract, work or labour,

and all warrants or other process issued on account of any of the matters in respect of which such soldier is exempted from such liability as aforesaid shall be null and void :

Provided that nothing in this sub-section contained shall be deemed to relieve any soldier from the obligation to attend as a witness before any court of law when duly summoned so to attend.

Restriction on attachment of soldier's pay.

(2) The pay of any soldier due or accruing to him at the date of judgment, or afterwards, shall not be liable to be attached upon any civil process except in respect of any debt or liability which he may have incurred within six years next before the third day of September, 1939, or in respect of any tax, licence, fee or debt due to the Crown, and for such debt, liability, tax, licence, fee or debt due to the Crown, when constituted by decree, his pay may be attached to an extent not exceeding one-third thereof. Where an order for such attachment is made, the court making the order shall give notice to the paymaster of the unit concerned and thereupon the amount ordered shall be stopped out of the judgment debtor's pay until the amount of the decree is made good.

Soldier's equipment, etc., not liable to execution.

(3) No execution shall be levied against the arms, ammunition, equipment, regimental necessaries or clothing of any soldier.

Extent to which plaintiff may otherwise obtain judgment and execution.
No. 27 of 1940.

(4) Subject to the foregoing provisions of this section, and subject to the provisions of the Courts (Emergency Powers) Ordinance, 1940, any plaintiff may, in a suit against any soldier, proceed to judgment and have execution in accordance with the law for the time being in force in the Colony relating to Civil Procedure :

Provided that upon instituting any such suit the plaintiff shall give notice in writing of the cause of action to the officer under whose command the defendant is serving at the date of service of the summons.

Power to vary Schedule.

4. The Governor may, by notice in the Gazette, delete from, vary or add to the Schedule to this Ordinance, any military unit.

1940 *Soldiers (Exemption from Civil Process)*

No. XXVIII

5. Nothing contained in this Ordinance shall apply to any soldier of the regular forces to whom section 144 of the Army Act, 44 and 45 Vict., Ch. 58, applies, ~~or to any soldier, as defined in section 2 of the King's African Rifles Ordinance, 1932, who was appointed to the King's African Rifles Regiment before the 3rd day of September, 1939.~~

Saving.

No. 48 of 1932.

Ord. No. 18/44 L. 50

6. The operation of section 89 of the King's African Rifles Ordinance, 1932, shall, ~~in so far as soldiers appointed to the King's African Rifles Regiment on or after the 3rd day of September, 1939, are concerned,~~ be suspended during the continuance in force of this Ordinance.

Suspension.

No. 48 of 1932.

Ord. No. 18/44 L. 50

SCHEDULE

The King's African Rifles.

The Kenya Regiment.

Any Unit established under the Military Units Ordinance, 1939.

No. 25 of 1939

The Northern Rhodesia Regiment.

The Kenya Indian and Arab (Territorial) Company.

The Royal West African Frontier Force.

The Mobile Field Force of the Union of South Africa.

The Southern Rhodesia Defence Forces.

The Northern Rhodesia Army Service Corps.

The Northern Rhodesia Field Ambulance Company.

The Kenya Defence Force.

Amended by Ord. No. 10/46
12/25/46
12/48

ORDINANCE No. XXIX of 1940

Assented to in His Majesty's name this twenty-fourth day of August, 1940.

HENRY MOORE,
Governor.

[24TH AUGUST, 1940.] Date of assent.

An Ordinance to Consolidate and Amend the Law relating to Mining

By Notice in the Gaz. 1940

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 Mining Ordinance, 1940, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title and commencement.

S.N. 874/40
L. 674.

PART I
 GENERAL

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“alluvial” includes all forms of mineral deposits which do not fall within the definition of “lode”;

“claim” means the unit of a location as prescribed;

“engineer” means a person who is a graduate of a school of mines recognized by the Governor, and has had three years' practical mining experience since graduating, or a person who has been in full charge of major mining or metallurgical operations for a minimum continuous period of five years;

“High Commissioner” means the High Commissioner for Transport established by the Kenya and Uganda (Transport) Orders in Council, 1925 to 1938;

“location” means an area in respect of which mining rights may be acquired under a prospecting right or exclusive prospecting licence in accordance with the provisions of this Ordinance;

“lode” or “reef” includes all true fissure veins, contact veins, segregated veins, bedded veins, metalliferous bankets, stockworks, such irregular deposits as conform generically to the above classification, and beds of any mineral, such as beds of ironstone;

“mine” includes any place, excavation or working whereon, wherein or whereby any operation in connexion with prospecting or mining is carried on;

“to mine” means intentionally to win minerals and includes any operations necessary for the purpose.

No. 42 of 1937. “minerals” means all minerals and mineral substances, other than mineral oil as defined in the Mineral Oil Ordinance, 1937, and may be precious metals, precious stones or non-precious minerals, but save for the purposes of Part V of this Ordinance and of the Mining (Safety) Regulations, 1932, or any regulations amending or replacing the same, shall not include clay, murrum, sand, limestone, sandstone or other stone, or such other common mineral substances as the Governor may by notice in the Gazette declare not to be minerals for the purposes of this Ordinance, always provided these do not contain any precious metal or precious stone in economically workable quantities;

No. 28 of 1938. “Native Area” means land within native lands, native reserves, temporary native reserves and native leasehold areas as defined in the Native Lands Trust Ordinance, 1938;

No. 28 of 1938. “Native Lands Trust Board” has the same meaning as the term “Trust Board” in the Native Lands Trust Ordinance, 1938;

“non-precious minerals” means all minerals other than precious metals or precious stones;

“officer of the Mines Department” means an officer appointed under section 9 of this Ordinance;

“open-cast” means any uncovered excavation which has been made from the surface for the purpose of winning minerals;

“precious metals” means gold, silver or metal of the platinoid group in the unmanufactured state, including ores containing such metal, but shall not include ores containing any such metal in combination with another mineral where such metal cannot be worked apart from such mineral and the value of such metal is less than the cost of producing both the metal and the mineral;

“precious stones” means any diamond, emerald, opal, ruby, sapphire, turquoise and any other stones which the Governor in Council may by notice in the Gazette declare to be included in this definition;

"private lands" includes lands privately owned and land the subject of a grant, lease or licence from the Crown;

"to prospect" means to search for minerals and includes such working as is reasonably necessary to enable the prospector to test the mineral-bearing qualities of the land;

"protection area" means an area within which an exclusive right of prospecting is acquired under a protection notice;

"protection notice" means a notice posted by the holder of a prospecting right in the prescribed manner for the purpose of creating a protection area;

"the regulations" means the regulations for the time being in force under this Ordinance;

"salt licks" means those deposits of salt or other mineral which are being regularly used as salt licks for stock, whether privately owned or not;

"stock" includes cattle, sheep, goats, horses, swine, camels, mules, donkeys, dogs and poultry;

"tailings" means all gravel, sand, slimes or other substance which is the residue of bona fide mining operations.

(2) For the purpose of this Ordinance, every Native Area shall be deemed to be private land, and the Native Lands Trust Board shall be deemed to be the owner thereof: Provided that any moneys received by that Board by way of rents or compensation shall be devoted to the use of the natives concerned.

3. Nothing contained in this Ordinance shall confer any right to prospect for or to win any mineral oil.

Mineral oil excluded from this Ordinance.

4. The entire property in and control of all minerals in, under or upon any lands in the Colony are and shall be vested in the Governor in trust for His Majesty, save in so far as such right may in any case have been limited by any express grant made before the commencement of this Ordinance, or by any certificate of ownership issued or hereafter issued under the hand and seal of the Recorder of Titles.

Control and property in minerals vested in the Governor.

5. Nothing in this Ordinance shall be deemed to authorize any person to enter any district or area to which entrance by him may be forbidden by any law, ordinance or regulation for the time being in force.

Prospecting in closed districts.

Penalty for prospecting or mining without authority.

6. (1) Except as in this Ordinance provided, any person who shall prospect or mine on any lands in the Colony shall be liable to a fine of one hundred pounds or to imprisonment for a term not exceeding six months, and to the forfeiture of all minerals obtained in the course of such unauthorized prospecting or mining, or if such minerals cannot be forfeited to the payment to the Government of the Colony of such sum as the court shall assess as the value of such minerals.

Lands excluded from prospecting or mining.

(2) Added by Ord. 10/44
7. The following classes of land are (save where otherwise in this Ordinance provided) excluded from prospecting or mining:—

- (a) land dedicated or set apart as a place of burial or for any public purpose other than mining, except with the consent of the Governor;
- (b) any area situate within any municipality or township or trading centre, except with the consent of the owner or holder of the surface rights and of the municipal or other authority exercising control thereof;
- (c) land held under grant or lease giving the holder rights of working the minerals, non-precious minerals, precious metals and precious stones, save by the holder thereof:

Provided that any prospecting or mining operations carried on by such holder shall be subject to the provisions of Part V of this Ordinance in so far as they are applicable and to the provisions of the Mining (Safety) Regulations, 1932, or any regulations amending or replacing the same;
- (d) any area over which exclusive prospecting or mining rights have previously been granted by the Governor and are still subsisting and any area in respect of which an application for such rights in the prescribed form has been accepted for consideration and has not been subsequently rejected or withdrawn;
- (e) land reserved for the purpose of any railway or situate within one hundred yards of any railway, except with the consent of the High Commissioner;

- (f) any area which is the site of or is within one hundred yards of any dam, canal, reservoir or Government building, except with the sanction of the Governor;
- (g) any street, road or highway, or any land within sixty feet of the centre line of any street, road or highway, or land reserved for any public road or highway, without the consent of the Governor or of the municipal authority or other public body having the control thereof;
- (h) salt licks;
- (i) land within a Native Area except with the consent in writing of the Provincial Commissioner concerned on such conditions as may be stipulated by the Native Lands Trust Board;
- (j) land which the Governor may by notice in the Gazette declare to be excluded from prospecting or mining;
- (k) any area which is the site of or is within five hundred yards of the nearest boundary of any aerodrome or landing ground except with the permission of the Governor;
- (l) lands which are within the boundaries of an area over which an exclusive prospecting licence has been granted and
 - (i) which at the time when such exclusive prospecting licence was granted were either areas over which exclusive prospecting or mining rights had been previously granted and were still subsisting, but which have since the grant of such exclusive prospecting licence been abandoned, cancelled, forfeited or otherwise lapsed, or were areas in respect of which an application in the prescribed form for any such rights had been accepted for consideration and have since the grant of such exclusive prospecting licence been abandoned, cancelled, forfeited or otherwise lapsed; or
 - (ii) over which the holder of such exclusive prospecting licence has during the existence of such licence obtained location, lease or other

mining rights and which rights have also during the existence of such licence been abandoned, cancelled, forfeited or otherwise allowed to lapse, save in each case by the holder of such exclusive prospecting licence.

Should any question arise as to whether any particular land is excluded under this section it shall be referred to the Governor, whose decision shall be final and conclusive.

Saving for native custom.

8. Nothing in this Ordinance shall be deemed to prevent any native of the Colony from taking, subject to such conditions as may be prescribed, iron, salt or soda from lands (other than lands within the area of a mining lease or location) from which it has been the custom of the members of the community to which that native belongs to take the same.

Employment of officers.

9. The Governor may appoint a Commissioner of Mines (hereinafter referred to as "the Commissioner"), a Mining Engineer, Inspectors and Assistant Inspectors of Mines, Wardens and Registrars, and such other officers as may be necessary for the carrying into effect of the provisions of this Ordinance.

Powers of Commissioner may be exercised by other officers.

10. The Commissioner may, with the approval of the Governor, delegate or assign to any other officer appointed under section 9 of this Ordinance all or any of his powers and duties.

No action lies against officers for acts done in execution of their duties.

11. No action or other legal proceeding whatsoever, civil or criminal, shall be instituted in any court against the Commissioner or other officer or any person acting under his authority for or on account of or in respect of anything done in good faith and in the execution or intended execution of his duty under this Ordinance.

Royalties.

12. All minerals obtained in the course of prospecting or mining operations shall be liable to such royalties as may be prescribed:

Provided that the Commissioner may by permit under his hand exempt from liability to royalties samples of minerals extracted for the purposes of assay, and/or of metallurgical tests.

PART II

A—PROSPECTING RIGHT

Prospecting right.

13. (1) The Commissioner or an officer duly authorized by him in that behalf may issue to any person a prospecting

right in the prescribed form upon the payment of the prescribed fee: Provided that a prospecting right shall not be granted—

- (a) to any person who is under eighteen years of age;
- (b) to any person who, in the opinion of the Commissioner, is unable to understand the provisions of this Ordinance and the regulations;
- (c) to any person to whom there has previously been issued either in his own name or as agent for any individual, company, body of persons or partnership a prospecting right which has not been surrendered or cancelled and which is in all other respects still valid.

(2) A prospecting right may be granted to an individual as agent for another individual if such agent is the lawfully constituted attorney of such individual.

(3) A prospecting right shall not be granted to a company, body of persons or partnership as such, but may be granted to an individual as agent of the company, body of persons or partnership. In such case the application for the prospecting right must be made by the individual in person, who must either be the lawfully constituted attorney of the company, body of persons or partnership or produce an application in writing for the grant of the prospecting right to the individual as agent for the company, body of persons or partnership, signed by a director or responsible manager of the company, or by all the members of the body of persons or by every member of the partnership. Such application shall contain an undertaking by the company or by every member comprising the body of persons or by every member of the partnership with the Government of the Colony to be responsible for the acts and omissions of the individual, who shall also be responsible for his own acts and omissions.

(4) A prospecting right shall not be transferable and shall be in force for a period of one year from the date of issue, but may be renewed for a period of one year from the date of expiration thereof or from the expiration of any renewal thereof upon application being made in the prescribed form and upon payment of the prescribed fee.

(5) A prospecting right shall be produced whenever demanded by the owner or occupier of private land on which the holder thereof is prospecting, or by any administrative officer, officer of the Mines Department or police officer.

(6) A fee of twenty shillings shall be paid for every prospecting right and for every renewal thereof.

Prospecting
right privileges.

14. Subject to the exceptions contained in section 7 of this Ordinance, and to the regulations and to the provisions of any law as to forests or as to the regulation of natural water supplies, the holder of a prospecting right may—

(a) by himself, his agents and servants—

(i) prospect on any land in the Colony for any minerals, except diamonds, unless the Commissioner shall endorse on the prospecting right authority to prospect for diamonds. Any such authority may be refused by the Commissioner without assigning any reason and, in any case in which such authority is granted, the Commissioner may—

(A) limit such authority to any specified area of land and/or to the time during which it shall remain in force;

(B) make such authority subject to any terms and conditions which he, in his absolute discretion, shall deem fit:

Provided that the holder of a prospecting right shall not prospect in a forest area or game reserve unless he has first given notice to the officer in charge of such area or reserve and complies with the conditions lawfully imposed by such officer;

(ii) whilst engaged in bona fide prospecting erect on any unoccupied land his camp and such buildings or machinery as may be necessary for the purpose of prospecting, free of charge on unoccupied Crown lands or on private lands on payment or tender of a reasonable sum in payment therefor;

(iii) make excavations, sink shafts or wells, drive adits or levels or dig trenches;

(iv) on any land not excluded from prospecting take for the purposes of bona fide prospecting

or for his domestic use water from any lake, river or stream, and, with the consent of the owner or occupier of private land or on tendering to the owner or occupier a reasonable sum in payment therefor, any fuel other than standing timber: Provided that he shall not divert water from any river, stream or watercourse without the consent of the authority having control thereof;

(v) graze upon lands not excluded from prospecting such horses or other animals as may be necessary for his subsistence or for the carrying on of prospecting or mining, free of charge on unoccupied Crown lands and on private lands on payment or tender of a reasonable sum in payment therefor;

(b) by himself—

- (i) create a protection area;
- (ii) apply for an exclusive prospecting licence; and
- (iii) peg locations.

15. Any person intending to prospect on private lands shall, before creating any disturbance thereon, give notice to the occupier of such land, and, if practicable, to the owner thereof, and shall, if required by the owner or occupier, give security in such sum as the Commissioner may direct for the payment of compensation for the disturbance of surface rights and for any damage done to the land or trees or crops thereon or to stock by the prospector, and, if required by the owner or occupier, shall desist from prospecting on the land until such security has been given.

Prospecting on private land.

16. The holder of a prospecting right may apply to the Governor for an authority to prospect on any lands excluded from prospecting and the Governor, notwithstanding any other provisions of this Ordinance, may grant such authority on such terms as to area, period, rent and other conditions as he may think fit. Failure to comply with any of the terms so fixed shall render the authority liable to cancellation.

Authority to prospect on land excluded.

17. (1) When any land has been excluded by the Governor from prospecting or mining under the provisions of paragraph (j) of section 7 of this Ordinance, the Governor may, by notice in the Gazette, declare the whole or any part

Authority to prospect and/or mine on land re-opened after exclusion under section 7 (j) of this Ordinance.

of such land to be re-opened to prospecting and/or mining.

(2) Upon such reopening the Governor may, by notice in the Gazette, declare that the whole or such part of the land as is re-opened may be prospected and/or mined in accordance with—

(a) the provisions of this Ordinance and the regulations, or

(b) a special licence which, notwithstanding the provisions of this Ordinance and the regulations, may contain such terms and conditions as the Governor in his discretion may determine.

(3) Without in any way restricting or fettering the discretion of the Governor granted by paragraph (b) of subsection (2) of this section, a special licence may contain terms and conditions in respect of the following matters—

(a) area;

(b) the minerals which may be prospected for and/or mined, and the methods of prospecting and/or mining to be adopted;

(c) rents, royalties and fees;

(d) labour;

(e) form and period of such licence.

(4) Any special licence granted under the provisions of this section shall be subject to all the terms and conditions contained therein and to all the provisions of this Ordinance and the regulations, except in so far as the terms and conditions contained in such licence expressly provide for non-compliance with any provisions of this Ordinance and/or the regulations.

B—EXCLUSIVE PROSPECTING LICENCE

Exclusive
prospecting
licences.

18. (1) The Governor may grant an exclusive prospecting licence to any person who holds a prospecting right or to any person, company, body of persons or partnership whose agent is the holder of a prospecting right issued to him as such agent.

(2) An application for an exclusive prospecting licence shall be in the prescribed form, and the applicant shall submit with his application a programme of work and satisfy the Governor that he has sufficient capital to ensure the

proper prospecting, by methods approved by the Governor, of the area in respect of which the application is made and the payment of any compensation which may be payable to the owners and occupiers of the land in respect of which the licence is required and shall, if required by the Governor or by the regulations, furnish a financial guarantee for such sum as the Governor may direct or as may be prescribed. Notice of every such application, if accepted for consideration, shall be published in the Gazette.

(3) The Governor may, in his absolute discretion, grant an exclusive prospecting licence for precious metals, precious stones and non-precious minerals or one or more of them, provided that no such licence shall be granted for diamonds, unless it is specially endorsed with authority to prospect for them. In every such exclusive prospecting licence such terms and conditions as the Governor may determine may be inserted therein, and upon any renewal of any exclusive prospecting licence issued under the provisions of the Mining Ordinance, 1933, or under this Ordinance, such terms and conditions as were inserted in the original licence or any renewal thereof may be re-inserted, added to, varied or modified at the discretion of the Governor: Provided that within a period of one year after the expiration, forfeiture or abandonment of any exclusive prospecting licence, no further exclusive prospecting licence in respect of the whole or any portion of the area of land comprised in the exclusive prospecting licence so expired, forfeited or abandoned shall be granted to the holder thereof nor to any person, company, body of persons or partnership associated in prospecting with such holder.

No. 61 of 1933.

(4) The area in respect of which an exclusive prospecting licence may be granted shall be in the sole discretion of the Governor.

(5) An exclusive prospecting licence shall be valid for one year from the date thereof, subject, on acceptance of a satisfactory programme of further development, to renewal as to the whole or any portion of the area in respect of which the original licence was granted, at the discretion of the Governor, for further terms of one year each up to a maximum of five years from the date of the original grant: Provided that, should renewal be refused, the licence shall be valid for a further period of thirty days from the date at which it would otherwise have expired.

(6) All exclusive prospecting licences shall be registered at the office of the Commissioner in the prescribed manner.

(7) For every exclusive prospecting licence there shall be paid a registration fee of ten shillings and a conveyancing fee of seven pounds ten shillings, and for every renewal thereof a registration fee of ten shillings and a conveyancing fee of such sum not exceeding seven pounds ten shillings as the Registrar of Mines may assess.

(8) Prior to the issue of any exclusive prospecting licence granted after the thirtieth day of June, 1939, and in respect of each renewal of any such exclusive prospecting licence, the holder thereof shall pay, in addition to all other fees due, a fee of one hundred shillings for every square mile or part thereof of the area included in the original or renewed licence :

Provided that the Governor, in his discretion, may reduce such fee :

Provided further that in respect of each renewal of any exclusive prospecting licence granted on or before the thirtieth day of June, 1939, over an area to which the Mining in Proclaimed Areas Ordinance, 1933, was applied, the holder of such licence shall pay, in addition to all other fees due, a fee as prescribed in the said Ordinance.

No. 22 of 1933.

Penalty for giving false information.

19. An applicant for an exclusive prospecting licence who wilfully or recklessly—

- (i) gives false information as to any matter in respect of which information is called for or required to be given under this Ordinance; or
- (ii) withholds any information which is called for under this Ordinance,

shall be guilty of an offence against this Ordinance.

Rights under an exclusive prospecting licence.

20. (1) The holder of an exclusive prospecting licence shall, upon the lands comprised in such licence and during the currency of such licence, subject to the provisions of this Ordinance and the regulations, have the following rights:—

- (a) the sole right of prospecting in accordance with the terms and conditions of his licence;
- (b) if he has obtained the consent of the Commissioner—
 - (i) the sole right of alluvial mining provided that there has been paid such fee in respect thereof as the Commissioner shall have required.

The amount of such fee shall in no case be in excess of a rate of two shillings in respect of every 10,000 square feet of land;

(ii) the right to remove and dispose of any minerals so mined provided that such minerals are minerals in respect of which the licence was granted;

(c) the sole right of pegging locations of any class of minerals for which the licence was granted, and, with the written authority of the Commissioner and upon such terms and conditions as he may think fit, the sole right of pegging locations of any other class of minerals for which locations may be pegged.

(2) The holder of an exclusive prospecting licence may for the purposes set out in sub-section (1) of this section by himself, his agents and servants—

(a) enter and exercise any of the rights mentioned in sub-section (1) of this section upon the lands comprised in his licence; and

(b) on and over unoccupied land comprised in his licence erect and maintain such machinery and plant and construct such ways as may be necessary for or in connexion with his prospecting operations and any alluvial mining.

21. (1) The holder of an exclusive prospecting licence shall not transfer his licence or any part thereof without the consent of the Governor signified by an endorsement thereon.

Transfer of licence.

(2) The transferee as well as the transferor shall be liable for the payment of all rents and compensation which may have accrued due, and the observance of all obligations imposed by the licence up to the date of the transfer in respect of the licence or part thereof so transferred, but the transferor shall not be liable for the payment of any future rents and compensation or the compliance with any obligations so imposed as aforesaid in regard to the licence or part thereof so transferred after the date of the transfer.

22. The holder of an exclusive prospecting licence shall during the continuance of the licence or any renewal thereof diligently observe all the terms and conditions of the licence:

Obligation of the holder of an exclusive prospecting licence.

Provided that the Commissioner may, on the application in writing of such holder and for good cause shown, by writing under his hand suspend the operation of any term and/or condition of the licence for such time as to the Commissioner may seem proper.

Records of prospecting operations.

23. The holder of an exclusive prospecting licence shall keep such records of his prospecting operations and alluvial mining (if any) as may be determined from time to time by the Commissioner. Copies of such records shall be submitted to the Commissioner as and when required by him.

C—GENERAL

Disposal of minerals obtained in prospecting.

24. (1) Subject to the provisions of paragraph (b) of sub-section (1) of section 20 of this Ordinance, minerals obtained in the course of prospecting under a prospecting right or an exclusive prospecting licence shall be the property of the Government of the Colony and, except for the purposes of sampling and assay, shall not be removed from the land or disposed of by the holder of the right or licence or by any other person except with the consent of the Commissioner:

Any person who contravenes the provisions of this sub-section shall be guilty of an offence against this Ordinance.

(2) The Commissioner may authorize the removal of minerals from the land from which they have been obtained to any place approved by him for safe custody, subject to such conditions, if any, as he may impose.

(3) If the holder of a prospecting right or an exclusive prospecting licence desires to retain or dispose of any minerals obtained in the course of prospecting he shall make an application in writing to the Commissioner, and if the Commissioner is satisfied that such holder has been conducting such work only as is reasonably necessary to enable him to test the mineral-bearing qualities of the land, he may authorize such holder to retain or dispose of the minerals in respect of which application is made on payment of the prescribed royalties.

Discovery to be reported.

25. When the holder of any exclusive prospecting licence or location granted under this Ordinance discovers on any land comprised in such licence or location any minerals

of economic value other than those for which the licence was granted or location was registered he shall immediately report the discovery thereof to the Commissioner.

26. (1) Whenever, in the course of prospecting or mining operations, any disturbance of the rights of the owner and/or occupier of private lands or damage to such lands or to any crops, trees, buildings, stock or works thereon is caused, the holder of the prospecting right, exclusive prospecting licence or location under which such operations are or were carried out, and his successors in title thereto, shall be liable, on demand duly made, to pay to such owner and/or occupier fair and reasonable compensation for such disturbance or damage, as the case may be, according to their respective rights or interests (if any) in the property concerned.

Payment of compensation to owners and/or occupiers of land.

(2) (a) If such person or his successor in title, as the case may be, fails to pay compensation when demanded under sub-section (1) of this section, or if an owner or occupier is dissatisfied with the compensation offered, such owner or occupier may, within six months of such demand having been made, take proceedings before the Commissioner in accordance with the provisions of Part IV of this Ordinance or before a court of competent jurisdiction:

Provided that when the claimant is a native the District Commissioner of the district shall, if the native desires, assess and determine the amount of the compensation, and the decision of such District Commissioner shall in such case be final, subject only to an appeal to the Governor.

(b) The notice of appeal against the decision of the District Commissioner shall be given by filing such notice in the office of such District Commissioner within thirty days of the date on which his decision is notified to the person desiring to appeal.

(3) The sum awarded shall be paid by such holder or successor in title, as the case may be, to the person entitled thereto within fourteen days of the date on which the amount of the final award is notified to such holder or such successor in title, as the case may be, or shall, pending the disposal of any appeals thereon, be paid—

(a) in the case of a native claimant to the Provincial Commissioner; or

(b) in the case of a non-native claimant into court.

(4) Any award made by virtue of the provisions of this section shall be enforceable as if it were a decree of a competent court.

(5) The Governor may suspend the prospecting right or exclusive prospecting licence or the right to work a location of the person in default until the amount awarded has been paid and until the holder of the right, licence or location has deposited with the Government of the Colony such further sum as security for any future payments as the Governor may demand, and if such payment and deposit is not made within such time as the Governor may consider reasonable the Governor may revoke the prospecting right, exclusive prospecting licence or forfeit the location of the person in default.

Revocation of
prospecting
right or
exclusive
prospecting
licence.

27. In the case of any breach by the holder of a prospecting right or an exclusive prospecting licence or by any attorney of or manager employed by such holder of any of the terms and conditions of his licence or of any of the provisions of this Ordinance or of any of the regulations, it shall be lawful for the Commissioner to call upon the holder of the right or licence to show cause, within a time specified by the Commissioner, why his right or licence should not be revoked, and should he fail to comply with such order within the time specified or should the cause shown not be adequate in the opinion of the Governor, the Governor may summarily revoke the right or licence, and thereupon all privileges and rights conferred thereby or enjoyed thereunder shall as from the date of such revocation cease:

Provided always that such revocation shall not in any way affect the liability of such holder in respect of the breach of any provision of the terms and conditions of his licence or of this Ordinance or of any of the regulations committed by him before such revocation.

PART III

MINING

Registration
of locations.

28. (1) When any holder of a prospecting right or exclusive prospecting licence pegs a location in the manner prescribed, on land not excluded from prospecting or mining in accordance with the provisions of this Ordinance and of the regulations, he shall within thirty days thereafter apply in the manner prescribed for registration, and shall state the class of the location pegged:

Provided that the Commissioner may in writing for good and sufficient cause extend such period.

(2) If the application is in accordance with the provisions of this Ordinance and of the regulations, the Warden shall register the location.

(3) Any person failing to apply for the registration of a location within the period authorized shall forfeit all rights in respect thereof and shall, if he works or mines on such a location, incur the penalty prescribed by section 6 of this Ordinance.

29. (1) A location shall be valid for one year from the date of pegging and may, if the holder thereof has complied with the prescribed conditions, be renewed on payment of the prescribed fee for further periods of one year each or lesser periods in the case of renewals to a common date approved by the Commissioner, as provided in sub-section (2) of this section, and of any further renewals from such common date or in any case in which re-pegging is permitted under the provisions of section 37 of this Ordinance, and in any case up to a maximum period of ten years from the date of pegging.

Duration of location.

Replaced by Ord. 15/48 p. 47

Ord. 2/43

(2) Subject to the regulations two or more locations may be renewed to a common date, provided that such renewal shall not extend the life of any one of such locations for a period of more than one year from the date of such renewal.

Renewals of locations to a common date.

(3) Notwithstanding anything to the contrary contained in the regulations the holder of a location which has expired may, with the written authority of the Commissioner, granted in his discretion, renew the whole or any part of the area of such location within thirty days after the date of its expiry upon the payment of a penalty of two shillings per claim in addition to the prescribed fee for renewal.

(4) Any locations renewed to a common date before the coming into force of sub-section (2) of this section in pursuance of any such power as is contained in such sub-section, and which would have been lawfully renewed to a common date, if that sub-section had come into force on the first day of January, 1933, shall be deemed to have been lawfully renewed to a common date.

30. Subject to the provisions of section 26 of this Ordinance, the holder of a location shall, in respect of such location, have the right by himself, his agents and servants to

Rights under a location.

enter upon the land the subject of the location, and the exclusive right to prospect and/or mine thereon and to remove therefrom and dispose of the minerals in respect of which the location shall have been registered; and have all the rights conferred upon a lessee by paragraph (2) of section 47 of this Ordinance.

Mining for mineral other than that for which location registered.

31. (1) The Commissioner may grant authority upon such terms and conditions as he may think fit permitting the holder of a location to mine on the land comprised in his location for any mineral other than that in respect of which the location shall have been registered, and may vary or revoke any such authority.

(2) If the holder of a location mines for any mineral other than that in respect of which his location or any authority as aforesaid has been granted, his location shall be liable to forfeiture.

(3) Locations shall be either alluvial locations or lode locations, provided that the Commissioner may grant authority, on such terms and conditions as he may think fit, permitting the holder of a location to conduct, on the land comprised in his location, mining operations of a kind different from that in respect of which his location is registered, and may vary or revoke any such authority.

(4) If the holder of a location on the land comprised in his location carries on mining operations of a kind different from that in respect of which his location is registered, unless authorized so to do under the preceding sub-section, his location shall be liable to forfeiture.

Right of location-holder to take timber.

32. The holder of a location may, on the lands included within the area of his location, cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes, provided that he shall be liable for any fees or royalties which may be payable under any law relating to forests and shall, before cutting, taking and using any such tree pay to the owner or occupier of the land on which such tree is standing a reasonable sum therefor. If the owner or occupier is dissatisfied with the compensation offered the dispute shall be dealt with under the provisions of section 26 of this Ordinance.

Transfer of locations and interests therein.

33. Subject to the approval of the Commissioner, after a location has been registered as aforesaid, the holder may, in the manner prescribed, by instrument in writing divide

his interest in the location into such shares as he shall think proper, and may allot shares or transfer the location or such sub-divisions thereof as may be authorized by the regulations, or create or transfer any interest therein.

34. (1) A location or part thereof shall be liable to forfeiture by the Commissioner if—

Locations,
when liable to
forfeiture by the
Commissioner.

- (a) the holder fails to comply with any of the provisions of this Ordinance or of the regulations in respect of such location or part thereof; or
- (b) if registration thereof has been obtained by any false or fraudulent representation or concealment, and in such case the holder shall also be deemed to have committed an offence against this Ordinance.

(2) If the Commissioner is satisfied that a location or part thereof should be forfeited he shall serve a notice upon the holder of such location or part thereof requiring him—

- (a) in the case of a breach or default which, in the opinion of the Commissioner, is not capable of being repaired or made good to show cause within a time specified why his location or part thereof should not be forfeited, or
- (b) in the case of a breach or default which, in the opinion of the Commissioner, is capable of being repaired or made good, to repair or make good such breach or default within a time to be limited in the notice.

(3) If the holder shall fail to show cause as aforesaid or shall have persisted in his neglect or refusal to repair or make good the breach or default, the Commissioner may by notice to the holder and in the Gazette state the cause of forfeiture and declare such location or part thereof to be forfeited as from a date to be specified in such notice:

Provided that such forfeiture shall not affect the liability of the holder in respect of the breach of any provision of this Ordinance or of the regulations committed by him before such forfeiture.

35. (1) The holder of a registered location or exclusive prospecting licence may abandon the whole or any part of the area comprised therein by notification to the Commissioner in writing, and on receipt of such notification the Commissioner shall publish in the Gazette notice of such abandonment and such notice shall be deemed to be valid and sufficient

Obligation on
abandonment.

proof of such abandonment. In the event of the abandonment of a portion only of the area comprised in a location or in an exclusive prospecting licence the remainder thereof shall be re-beaconed in accordance with the directions of the Commissioner.

(2) (a) Any person who shall abandon his location or any part thereof, or his exclusive prospecting licence area or any part thereof, and any person whose location or any part thereof, or exclusive prospecting licence area or any part thereof shall have been forfeited, shall in such a manner as to prevent persons or stock other than dogs or poultry inadvertently entering them, forthwith fill up, or secure to the satisfaction of the Commissioner all shafts, pits, holes and excavations and remove all notices, beacons and boundary posts thereon, and in default of so doing, shall be liable to a fine of fifty pounds or to imprisonment for a term not exceeding three months, and in addition shall be liable to pay such sum as the Commissioner may certify the cost of doing so will be.

(b) Any sum certified by the Commissioner under paragraph (a) of this sub-section shall, upon application made by the Commissioner, be enforced by a civil court in the same manner as a decree of such court.

(3) For the purposes of sub-section (2) of this section, failure to apply for registration or renewal of a location or for the renewal of an exclusive prospecting licence within the prescribed time shall be deemed to be an abandonment of such location or of such exclusive prospecting licence.

Owner may remove plant, etc., on expiry, abandonment, or forfeiture.

36. The owner of any plant, machinery, engines or tools on any expired, abandoned or forfeited location or exclusive prospecting licence area, may, within three months from the date of expiry, abandonment or forfeiture, or within such further period which in the case of such area or any portion thereof being in a Native Area but not otherwise shall not exceed six months from the date of expiry, abandonment or forfeiture (unless the time so fixed is extended with the consent of the Native Lands Trust Board) as the Commissioner may allow, remove such plant, machinery, engines or tools, but shall not remove or interfere with any timber in any mine, except with the written consent of the Commissioner. If such plant, machinery, engines or tools are not so removed, they may be sold by auction by order of the Commissioner at the risk of the owner thereof. The net proceeds

of such sale, after deducting the costs thereof, shall be paid to the Accountant General and held until applied for by the former owner. Any person who in breach of this provision removes or interferes with any timber in a mine shall be guilty of an offence against this Ordinance.

37. (1) The ground covered by a location or exclusive prospecting licence, which has expired or has been abandoned or forfeited, shall not be open to prospecting or pegging of locations until the completion of a period of thirty days from the date of such expiry, abandonment or forfeiture :

Repegging of
ground,
forfeiture, etc.

Provided that the holder of a location which has expired or been abandoned or forfeited, shall not unless authorized in writing by the Commissioner in accordance with sub-section (2) of this section, directly or indirectly through an agent or by any means whatsoever, peg or cover by a protection notice any portion of the expired, abandoned or forfeited location previously held by him until after the completion of ninety days from the date of such expiry, abandonment or forfeiture.

(2) The holder of a location which has expired or been abandoned or forfeited may, prior to the completion of ninety days from the date of such expiry, abandonment or forfeiture, apply in writing to the Commissioner to repeg the area of any such location previously held by him, and the Commissioner, provided he is satisfied—

- (a) that the pegs, beacons and notices of the location over which application to repeg has been made have been maintained in accordance with the provisions of this Ordinance and the regulations;
- (b) that all development footage required by such provisions up to the date of expiry, abandonment or forfeiture has been completed or the prescribed fee paid in lieu thereof; and
- (c) that the claims comprising the location to be repegged are to be identical with the expired, abandoned or forfeited location,

may, in his discretion, grant authority in writing so to repeg subject to the condition that such repegging is only permitted subject to any prospecting or mining title that may have been lawfully obtained by any other person between the date of expiry, abandonment or forfeiture and the date of repegging.

(3) Any such location, when so re-pegged and registered, shall only be valid in accordance with the provisions of this

Ord. 12/48

Ordinance and the regulations for a period coterminous with the life of the former location had such former location been renewed up to the maximum period of ^{ten} ~~ten~~ years from the date of its having been pegged.

Application of section 15 to locations.

38. The provisions of section 15 shall apply *mutatis mutandis* to a location.

LEASES

Grant of leases.

39. The Governor may grant a lease to the holder of a location in respect of the whole or any part of the area covered by any location or locations held by him upon such terms and conditions as he may determine.

Applications for leases.

40. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions, and shall be accompanied by payment of one year's rent in advance at the rate prescribed.

Applicant to show sufficient capital.

41. The Governor may require an applicant for a lease to show to his satisfaction that he possesses or commands or will within twelve months from the date of his application command sufficient working capital to ensure the development of and working of mining operations on the area applied for, and also such other information as the Governor may require.

Giving false information.

42. Any applicant for a lease wilfully or recklessly giving false information as to any of the matters in respect of which information is or may be required to be given under this Ordinance shall be guilty of an offence against this Ordinance.

Duration of lease.

43. A lease may be granted for such term, not being less than five nor more than twenty-one years, as the Governor may think proper.

Rent payable and penalty on non-payment thereof.

44. The lessee in respect of his lease shall pay to the Commissioner, yearly in advance, a rent of two shillings and fifty cents per annum per acre or part thereof and, if such rent is not paid within three months of becoming due, and the Commissioner has served notice on the lessee demanding payment, an amount of ten per centum of the amount due shall be added to the rent, and shall be due and payable as if it were part of the rent.

45. The rent reserved by any lease may be levied or recovered under the authority of or in the name of the Commissioner, in like manner as rent is or shall be leviable or recoverable by law in cases where private persons only are concerned.

Rent, how recoverable.

46. Any lessee desirous of obtaining a renewal of his lease shall make a written application therefor to the Commissioner not less than six months before the expiration of the current term of his lease.

Renewal of lease.

If the lessee has fully complied with the provisions of this Ordinance and the regulations and also with the terms and conditions of his lease and has paid the prescribed fee, the Governor may grant a renewal of the lease for a further term not exceeding twenty-one years upon the terms and conditions which are then generally applicable to new leases:

Provided that in the case of any such renewal the rent shall not be increased.

47. A lease shall confer upon the lessee the right in accordance with the terms and conditions of the lease and subject to the provisions of this Ordinance and the regulations by himself, his agents and servants:—

Rights under a lease.

(1) to enter upon the lands the subject of the lease and the exclusive right to mine on such lands and the right to remove and dispose of the minerals specified in the lease, and to do all such things as are reasonably necessary for the conduct of mining operations; and

(2) in so far as may be necessary for and in connexion with such mining operations—

(a) to make all necessary excavations;

(b) to erect, construct and maintain houses and buildings for his use and for the use of his agents and servants;

(c) to erect, construct and maintain such engines, machinery, buildings and workshops and other erections as may be necessary;

(d) to stack or dump any of the products of mining;

(e) subject to the provisions of any law relating to water, to lay water pipes and to make water-courses and pounds, dams and reservoirs, and

to divert from a natural watercourse any water on or flowing entirely through the land, provided that—

- (i) any water diverted not containing any noxious or poisonous matter shall be returned to its natural channel before leaving such land;
- (ii) any existing rights to use any source of natural water supply shall not be disturbed;
- (f) to construct and maintain such tramways, roads, communications and conveniences as may be necessary;
- (g) to graze upon lands not excluded from prospecting or mining such horses or other animals as may be necessary for his subsistence or for the carrying on of mining, free of charge on unoccupied Crown lands and on private lands on payment or tender of a reasonable sum in payment therefor:

Provided that whenever a disagreement shall arise between the owner in the case of private land and the lessee in connexion with surface rights, the matter shall be determined by the Commissioner.

Right of lessee to take timber.

48. The provisions of section 32 shall apply *mutatis mutandis* to a lessee.

Subterranean limits of locations and leases.

49. The subterranean limits of any location or lease shall be vertical planes passing through the sides by which the location or lease is bounded.

Subterranean lease.

50. The Governor may grant to the holder of a location in respect of the whole or any part of the area covered by any location or locations held by him, a lease of a subterranean area larger than the limits of the surface of land comprised in such lease.

In such case so much of the surface lying above the subterranean area of such lease as is not included in the lease shall be excluded from prospecting or mining, save by means of diamond drilling or similar method of drilling by the lessee, and the lessee of such subterranean area shall have the right to enter upon any part of the surface so excluded from prospecting or mining and construct thereon such works.

Replaced by Ord. 13748

ways, buildings and airshafts as may be deemed by the Commissioner necessary for the proper working of his lease on payment of such rent and such compensation for the use of such surface as the Governor may determine.

51. The provisions of section 25 shall apply *mutatis mutandis* to a lease granted under this Ordinance. Discovery to be reported.

52. A lessee shall not transfer or assign his lease or any part thereof without the consent in writing of the Governor signified by endorsement thereon. No transfer of lease without consent.

53. The provisions of sub-sections (1) and (2) of section 31 shall apply *mutatis mutandis* to a lease granted under this Ordinance. Mining for mineral other than that for which lease granted.

54. A lease shall not authorize the lessee to occupy or mine on or under land within one hundred yards of any Government or public buildings or works, or of any market, burial ground, public road, tramways, or of any railway, without the consent in writing of the Governor first obtained, and subject to the conditions, if any, imposed by the Governor. Mining near public buildings, railways, etc., prohibited except with consent of Governor.

55. The provisions of sections 15 and 26 shall apply *mutatis mutandis* to a lease granted under this Ordinance. Notice to private occupiers who may demand security.

56. (1) Notwithstanding the provisions of section 39 of this Ordinance the Governor may grant to the holder of a prospecting right a special lease of any land if he is satisfied that by reason of the difficulties and cost attending the mining in, on or under such land, or for any other cause, it is desirable that such a lease be granted. Special lease.

(2) The Governor may fix the form of, and area to be comprised in, any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations and exceptions to be contained in the same, but in all other respects such special lease and the applications for the same shall be subject to the provisions of this Ordinance and of the regulations.

57. A lessee may, at any time during the existence of his lease, lodge with the Commissioner a notice in writing, to be accompanied with the prescribed fees, of his intention to surrender the whole or any part of the area comprised in his lease, and, if the sanction of the Governor to such surrender be endorsed in writing on the lease, the area mentioned Surrender of lease.

in the said notice shall be deemed to be surrendered at the expiration of six months from the date such notice was lodged :

Provided that such surrender shall not affect any liability incurred by the lessee before such surrender shall have taken effect.

Grounds for forfeiture of lease.

58. (1) The Governor may, by notice to the lessee, declare a lease to be forfeited in the following cases :—

(a) if the lessee shall commit a breach or default of any provision of this Ordinance or of the regulations in respect of such lease, or of any term or condition of the lease, and the Governor shall have caused a notice to be served upon the lessee requiring him—

(i) in the case of a breach or default which in the opinion of the Governor is not capable of being repaired or made good to show cause within a time specified therein why his lease should not be forfeited; or

(ii) in the case of a breach or default which in the opinion of the Governor is capable of being repaired or made good, to repair or make good such breach or default within a time to be limited in the notice,

and the lessee shall have failed to show cause as aforesaid or shall have persisted in his neglect or refusal to repair or make good the breach or default; or

(b) if the lessee shall wholly cease work in, on, or under the land the subject of the lease during a continuous period of six months, without the written consent of the Commissioner.

(2) Such forfeiture shall not affect any liability already incurred by the lessee.

(3) Publication in the Gazette together with written notice to the last known address of the lessee shall be sufficient notice to the lessee.

Treatment of tailings, etc., after the determination of a lease.

59. (1) Any lessee whose lease has expired or has been surrendered or forfeited may, within thirty days of such expiry, surrender or forfeiture, apply to the Commissioner for leave to enter the land which was comprised in the lease and treat or remove any tailings or ore at grass left thereon by him.

The Commissioner may grant such leave and may fix a time, which in the case of such land or any portion thereof being in a Native Area, but not otherwise, shall not exceed six months from the date of expiry, surrender or forfeiture (unless the time so fixed is extended with the consent of the Native Lands Trust Board) within which such treatment or removal is to be completed.

(2) If such leave is not applied for within thirty days or such treatment or removal is not completed within the time fixed, any tailings or ore at grass remaining on the land shall become the absolute property of the Government of the Colony.

60. The provisions of section 36 shall apply *mutatis mutandis* to a lessee.

Owner may remove plant, etc., on surrender.

61. Every lease under this Ordinance shall be registered in the office of the Commissioner in the manner prescribed.

Registration of leases.

62. (1) Any sale, lease, mortgage, charge, lien, option or other dealing relating to any prospecting or mining title shall be void as against any subsequent purchaser for value of such prospecting or mining title unless either—

Registration of dealings.

(a) it is registered in the prescribed manner before such subsequent purchaser for value acquires such prospecting or mining title; or

(b) such subsequent purchaser for value has actual notice thereof at the time he acquires such prospecting or mining title.

(2) Nothing in this section contained shall prejudice or affect any contractual right or obligation, or other right *in personam*, or any right to any prospecting or mining title, against any person other than a purchaser for value of such prospecting or mining title who has pursuant to the provisions of sub-section (1) of this section acquired such title free from priorities which were not registered before, or of which he had no actual notice at the time, he acquired such title.

(3) For the purposes of this section—

“prospecting or mining title” includes an exclusive prospecting licence, a location and a mining lease; and

“purchaser for value” means any purchaser, mortgagee, chargee, lessee or option-holder who acquires his interest as such for valuable consideration of any description whatsoever.

PART IV

DISPUTES

Commissioner
may decide
disputes.

63. Subject to the provisions of any law for the time being in force in the Colony the Commissioner may inquire into and decide all disputes, concerning any of the matters hereinafter mentioned, and shall have power to make any order which may be necessary for the purpose of giving effect to his decision and to order the payment by any party to the dispute of such compensation to any other party as may be reasonable. Such matters are as follows:—

(1) Disputed boundaries of any area held under prospecting or mining right.

(2) Any wrongful act committed, or any act wrongfully omitted, or alleged to have been committed or omitted, in the course of prospecting or mining operations, by any person against any other person.

(3) Acts, omissions or matters in the course of, connected with or auxiliary to prospecting or mining operations.

(4) The claim of any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have any priority of water taken, diverted, used or delivered, as against any other person claiming the same.

(5) Assessment and payment of compensation where provided for under this Ordinance, except where express provision is made in this Ordinance for another authority so to do.

Procedure.

64. The mode of proceeding shall be as follows:—

(1) The person complaining shall lodge a memorandum in duplicate at the office of the Commissioner.

(2) The memorandum shall be in the prescribed form, or in a form to the like effect, and shall specify shortly the subject-matter of the complaint and the relief claimed.

(3) Upon receipt of the memorandum the Commissioner shall give notice in the prescribed form, by post or otherwise, to the party sued of the nature of the complaint, and the time and place at which the same

will be heard and determined, and may, if he thinks fit, and shall, if the person complaining requests him to do so in the prescribed manner, require him to answer the complaint in writing.

(4) At the time and place appointed the parties shall attend and state their cases before the Commissioner and may call evidence on oath (which oath the Commissioner is hereby authorized to administer) in support thereof, and the Commissioner, having heard such statement and evidence, shall give his decision.

(5) The Commissioner may adjourn such hearing to any other time or place, and may, either at the original hearing or any adjournment, proceed in the absence of either party.

(6) The Commissioner may at any time during the hearing seize or cause to be seized any minerals, and may detain them pending his decision.

(7) The law for the time being regulating proceedings before and the powers of a subordinate court of the first class in the exercise of its civil jurisdiction shall, so far as practicable, and subject to any modifications, additions or alterations which may be prescribed but without any restriction or limit as to the value of the subject-matter in dispute, apply to proceedings before the Commissioner and to the enforcement of his decisions in like manner as if such decisions were the decisions of such court.

(8) Fees shall be charged as may be prescribed.

65. (1) The Commissioner shall keep a record of all cases heard and complaints decided by him, and shall take notes in writing of all evidence given before him.

Commissioner to keep record and take notes.

(2) Any person interested in any dispute, decision or order shall be entitled to obtain a copy of such record and notes upon payment of the prescribed fee.

66. (1) The Commissioner may send a copy, certified under his hand and seal, of any decree or order made by him to any civil court within the local limits of whose jurisdiction the subject-matter of the decree is situated, and such civil court shall enforce the decree of the Commissioner in the same manner in which it would enforce its own decree or order.

Enforcement of Commissioner's decrees.

(2) The same fees only shall be payable in the civil court upon the enforcement of such decree or order as would be payable upon the enforcement of a like decree or order made by such court.

Appeal to
Supreme Court
from decision of
Commissioner.

67. (1) Any person aggrieved by any decree, order or decision made or given under the powers vested in the Commissioner under this Part of the Ordinance may appeal to the Supreme Court.

(2) No appeal to the Supreme Court shall be admitted after the expiration of thirty days from the date of the decree, order or decision appealed against except by leave of a judge of the Supreme Court.

Power to
award costs.

68. In any dispute adjudicated upon under the provisions of section 63 of this Ordinance, the Commissioner may award costs to the successful party. The Supreme Court shall, by rule, prescribe the scale of costs which may be awarded under this section.

Jurisdiction of
ordinary courts
not excluded.

69. Nothing in this Part contained shall be deemed to prevent any person from instituting in any of the courts of the Colony any proceedings he may think fit to institute, as provided by law:

Provided that, subject to the provisions of section 67 of this Ordinance, where a dispute has been adjudicated upon in accordance with the provisions of section 63 of this Ordinance, proceedings in respect of the same cause of action shall not thereafter be instituted in any of the courts of the Colony.

PART V

INSPECTION AND ACCIDENTS

Powers of
officers.

70. The Commissioner, Mining Engineer, Inspector of Mines or Assistant Inspector of Mines or any other person duly authorized by the Commissioner in that behalf, at all reasonable times by day or night, but so as not unreasonably to impede or obstruct work in progress, may—

(i) enter, inspect and examine any land on which prospecting or mining operations are being conducted or which is the subject of any right, licence, location or lease;

(ii) examine into and make enquiry respecting the condition and ventilation of any mine and any building

connected with prospecting or mining activity and all matters relating to the safety and health of the persons employed;

- (iii) inspect and examine the state of the machinery used upon or in the mine, and the state of all plant, works and ways;
- (iv) examine and take extracts from all books, accounts, vouchers and documents relating to prospecting or mining operations or to any minerals obtained by such operations, and examine and take samples of any material being mined. Any such information so obtained shall be confidential to Government;
- (v) inspect the storage of explosives upon any mine and direct in what manner the same shall be stored;
- (vi) examine and make preliminary investigation into any accident occurring in respect of any prospecting or mining activity;
- (vii) exercise all powers necessary for carrying this Part of this Ordinance into effect.

71. (1) If in any respect such Mining Engineer, Inspector of Mines or Assistant Inspector of Mines or other authorized officer or person finds any mine or any matter, thing or practice in or connected with prospecting or mining operations to be dangerous or defective so as, in his opinion, to threaten or tend to the bodily injury of any person or stock, he shall give notice in writing thereof to the lessee or the holder of the right, licence or location or his agent in charge of the mine or operations, and shall state in such notice the particulars in which he considers such mine, matter, thing or practice to be dangerous or defective, and shall require the same to be remedied, either forthwith or within such time as he may specify, and may order work to be suspended until the danger is removed to his satisfaction.

Obligation to remedy any dangerous practice.

(2) On receipt of such notice, the lessee or the holder of the right, licence or location or his agent shall comply therewith, or, if he intends to object thereto, as provided by the following section, he shall cease to use the said mine, or part thereof, machine, plant, matter, thing or practice as to which such notice shall have been given, and shall forthwith withdraw all men from the danger indicated by such officer until

such time as the matter shall have been determined by the Commissioner, and in case of default shall be guilty of an offence against this Ordinance:

Provided that if, in the opinion of such officer, there be no immediate danger, he shall allow work to proceed during such period, under such restrictions and upon such conditions as he may consider necessary and shall specify in writing, to ensure the safety of the persons and stock.

Proceedings on objection to comply with notice.

72. If such lessee or holder of the right, licence or location or his agent objects to remedy the matter complained of in any notice under the last preceding section he may, notwithstanding that such notice may specify a time less than twenty-one days in which the requirements referred to therein have to be complied with, lodge his objection in writing with the Commissioner within twenty-one days after the receipt of such notice, and thereupon the matter shall be submitted to and determined by the Commissioner or by such officer as he may appoint in that behalf.

Proceedings on failure to comply with notice.

73. If such lessee or holder or his agent fails to comply with the requisition of the notice, where no objection is lodged within the time aforesaid, or with the decision of the Commissioner or other officer as aforesaid, immediately after the expiration of the time for objection or the decision (as the case may be), he shall be liable to a penalty not exceeding seven hundred and fifty pounds.

Agreement not to preclude or exempt.

74. No person shall be precluded or exempted by any agreement from doing such acts as may be necessary to comply with the provisions of the last preceding three sections, or be liable under any contract to any penalty or forfeiture for doing such acts.

Proceedings in case of accidents.

75. (1) Every person in charge of prospecting or mining operations shall, as soon as practicable after the occurrence of any accident in connexion with prospecting or mining operations causing or resulting in loss of life, or injury to any person causing temporary or permanent, partial or total incapacity, report in writing the facts of the matter so far as they be known to him to the District Officer of the district in which the accident occurred and to the nearest officer of the Mines Department.

(2) In the event of any such accident a magistrate of the first or second class shall hold an enquiry into the cause thereof.

(3) The magistrate holding the enquiry shall, for the purpose of an enquiry under sub-section (2) of this section, have the powers to summon witnesses, to call for the production of books and documents and examine witnesses and parties concerned on oath.

(4) Any person summoned to attend or to produce books or documents as aforesaid, and refusing or neglecting so to do, or refusing to answer any question put to him by or with the concurrence of the magistrate, shall be liable on conviction to a fine of five pounds, provided that no person shall be bound to incriminate himself, and every witness shall, in respect of any evidence given by him at such enquiry be entitled to the same privileges to which he would have been entitled if giving evidence before a court of justice.

(5) Any witness attending at the request of or upon summons by a magistrate shall, subject to any order made by such magistrate, be entitled to like expenses as if summoned to attend the Supreme Court in a criminal trial, and payment shall be made in such manner as the Governor may direct.

76. (1) In this section—

“award” means the amount of compensation assessed by a magistrate under sub-section (2) or endorsed by a magistrate under sub-section (8), or assessed on review by a magistrate under sub-section (9) of this section;

“earnings” includes wages paid to the workman by the employer and the value of any food, fuel or quarters supplied to the workman by the employer if as a result of the accident the workman is deprived of such food, fuel or quarters; and any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise: but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or any ex gratia payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a workman toward any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

Compensation
in case of
accidents.

Interpretation.

“employer” includes a lessee, holder of a location, licence or right, and includes a tributer or agent of a lessee, holder of a location, licence or right;

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time: Provided that every injury specified in the Schedule to this Ordinance, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred per centum or more shall be deemed to result in permanent partial incapacity;

“serious and wilful misconduct” includes drunkenness, wilful contravention of any law or regulation made for the purpose of ensuring the safety of or preventing accidents to persons, or any other act of omission which a magistrate, having regard to all the circumstances of an accident causing injury, may declare to be serious and wilful misconduct;

“temporary incapacity” means the temporary inability of a workman to perform the work at which he was employed at the time of the accident;

“total incapacity” means such incapacity, whether of a temporary or permanent nature, as incapacitates a workman for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity: Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the Schedule to this Ordinance where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per centum or more;

“workman” includes, subject to the provisions of subsection (11) of this section, any person employed by a lessee, holder of a location, licence or right, and includes any person employed by a tributer or agent of a lessee, holder of a location, licence or right.

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Mining

No. XXIX

(2) If in any employment in connexion with mining or prospecting operations personal injury by accident arising out of and in the course of such employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation assessed by a magistrate in accordance with the provisions of this section:

Compensation on death of or injury to workman.

Provided that no compensation shall be payable under this section if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman.

(3) (a) When death results from the injury—

Compensation in fatal cases.

(i) if the workman leaves any dependants, the amount of compensation shall not exceed a sum equal to thirty-six months' earnings of the workman at the time of the injury or seven hundred and fifty pounds whichever is less;

(ii) if the workman leaves no dependants, the reasonable expenses of the burial of the deceased workman and the reasonable expenses of medical attendance on the deceased workman, not exceeding in all the sum of one hundred pounds.

For the purposes of this sub-paragraph the term "reasonable expenses of medical attendance" includes hospital fees.

(b) In cases under sub-paragraph (i) of paragraph (a) of this sub-section the compensation shall be paid—

(i) if the workman was a non-native, to his legal representative for and on behalf of the dependants of the workman;

(ii) if the workman was a native, to the District Commissioner of the district in which the accident occurred for and on behalf of the dependants of the workman.

(c) In fixing the amount of compensation under sub-paragraph (i) of paragraph (a) of this sub-section the magistrate shall have regard to any amount the workman may have received by way of periodical payments.

(4) When permanent total incapacity results from the injury the amount of compensation shall be a sum equal to thirty-six months' earnings of the workman at the time of his injury or seven hundred and fifty pounds whichever is less.

Compensation in the case of permanent total incapacity.

Compensation in the case of permanent partial incapacity.

(5) (a) Where permanent partial incapacity results from the injury the amount of compensation shall be—

(i) in the case of an injury specified in the Schedule to this Ordinance, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in the Schedule to this Ordinance, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury.

(b) Where more injuries than one are caused by the same accident, the amount of compensation payable shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

Compensation in the case of temporary incapacity.

(6) Where temporary incapacity results from the injury the compensation shall be the payment periodically, at such times or at such intervals as payment of earnings was habitually made to the injured workman immediately prior to the accident, of amounts not exceeding fifty per centum of the earnings which the workman was receiving from the employer at the time of the accident. Such periodical payments shall be made as from the date of the incapacity until the workman is sufficiently recovered therefrom to resume the work which he was employed to perform at the time of the accident or work similar thereto, but in no case shall such periodical payments be made for a period exceeding twelve months after the date of the incapacity :

Provided that the employer may deduct from such periodical payments such amount as is equivalent to any payment, allowance or benefit which the workman may receive from the employer during the incapacity, but in every case such deduction shall not reduce the periodical payments below an amount which will provide the workman and the members of his family dependant on him with ordinary necessary living expenses.

To whom compensation is payable.

(7) In any case under sub-section (4), (5) or (6) of this section the compensation shall be paid to the injured workman.

(8) Notwithstanding the provisions of sub-section (2) of this section the employer and a non-native workman in any case under sub-section (4), (5) or (6) of this section, and the employer and a native workman, in any case under sub-section (6) of this section, may, after the injury in respect of which the claim to compensation has arisen agree in writing as to the compensation to be paid by the employer. Such agreement shall be in duplicate, one copy to be kept by the employer and one copy to be kept by the workman and such agreement shall, as soon as possible, be taken to the nearest magistrate by the workman:

Agreement
as to
compensation.

Provided that—

- (a) the compensation agreed upon shall not be less than the amount payable under the provisions of this section; and
- (b) the agreement shall not be binding against the workman unless it is endorsed by a certificate of a magistrate to the effect that he has read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement.

(9) (a) Any periodical payment payable under this section, either under agreement between the parties or assessed by the magistrate, may be reviewed by the magistrate on the application either of the employer or of the workman:

Review.

Provided that where the application for review is based on a change in the condition of the workman any such application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

(b) Any periodical payment may, on review under this section, and subject to the provisions of this section, be continued, increased, diminished, converted to a lump sum, or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the workman is entitled under the provisions of sub-section (4) or sub-section (5) of this section, as the case may be, less any amount which he has already received by way of periodical payments.

(c) Where application is made by an employer under this section for any periodical payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay to the magistrate

the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the magistrate made on a review under this section.

(d) In making a review under this section the magistrate shall have regard only to the capacity for work of the workman as affected by the accident.

Appeals.

(10) (a) Subject to the provisions of this sub-section an appeal shall lie to the Supreme Court from any decision of a magistrate made under this section.

(b) Unless some question of law is involved in the appeal, no appeal shall lie, except with the leave of the Supreme Court, if the amount in dispute in the appeal is less than twenty-five pounds.

(c) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the magistrate, or in which the award of the magistrate gives effect to an agreement come to by the parties.

(d) No appeal shall lie after the expiration of thirty days from the date of the award of the magistrate:

Provided that the Supreme Court may, if it thinks fit, extend the time for appealing under this sub-section notwithstanding that the time for appealing has elapsed.

No. 3 of 1924.

(e) The provisions of the Civil Procedure Ordinance, 1924, and the rules made thereunder prescribing the procedure to be followed for appeals in the case of decrees made by the magistrates shall, as far as may be, apply in the case of appeals from awards made by magistrates under this section.

Workmen
excluded from
compensation.

(11) The provisions of this section shall not apply in respect of a personal injury to or the death of a workman who at the time of the accident was—

(a) paid a wage or salary in respect of his work by the hour at a rate exceeding five shillings per hour;

(b) paid a wage or salary in respect of his work by the day at a rate exceeding thirty-five shillings per day;

(c) paid a wage or salary in respect of his work by the week at a rate exceeding two hundred shillings per week;

(d) paid a wage or salary in respect of his work by the month at a rate exceeding eight hundred and thirty-three shillings and cents thirty-three per month;

(e) paid a wage or salary in respect of his work by the year at a rate exceeding ten thousand shillings:

Provided that the daily, weekly, monthly or yearly pay of such person shall be calculated exclusive of pay for over-time.

(12) Any award of compensation shall upon application made by the person to whom it is payable be enforced by a Civil Court in the same manner as a judgment of such court.

Enforcement of payment.

PART VI

MISCELLANEOUS

77. In any case where the Government of the Colony is acquiring, under the provisions of any law relating to the compulsory acquisition of land for the time being in force in the Colony, any land held under a lease, exclusive prospecting licence or location, compensation shall be payable in respect of any disturbance of prospecting or mining rights, in addition to any other compensation.

Compensation on acquisition of land by Government.

78. The Governor may at any time remove from Crown land, subject to any lease or location, any clay, gravel, stone, brushwood, timber or other materials required for any public works.

Power to remove materials.

79. The Governor may, notwithstanding the previous grant of any licence, location or lease over any land under this Ordinance, make any grant of such land which he is empowered by law to make: Provided that the person to whom any such grant may be made shall not be entitled to compensation for any disturbance of his rights under the grant by reason of the exercise by the holder of any licence or location or by any lessee under this Ordinance of any rights conferred upon him by such licence, location or lease:

Subsequent grants.

Provided always that, before making such grant, the Governor shall give notice to the holder of such licence or location or the lessee of his intention to make such grant.

80. (1) In any case where the holder of any licence or location or any lessee shall die, the obligations imposed upon such holder or lessee by this Ordinance or by the regulations or by any regulations made under the Ordinance repealed by this Ordinance which are still subsisting shall be suspended and the rights conferred on such holder or lessee by such Ordinance or by such regulations shall be preserved for six months from the date of death:

Protection of estate of deceased person, bankrupt or lunatic, etc.

Provided that the Commissioner may for good and sufficient cause extend the time.

(2) In any case where the holder of a licence or location or any lessee shall—

- (i) have a receiving order in bankruptcy made against him; or
- (ii) be found to be a lunatic under the provisions of any law relating to lunacy for the time being in force in the Colony; or

being a company—

- (iii) have a winding up order made against it by the court;

the obligations imposed upon such holder or lessee by this Ordinance or by the regulations or by any regulations made under the Ordinance repealed by this Ordinance which are still subsisting or by the licence or lease shall be suspended and the rights conferred on such holder or lessee by such Ordinance or by such regulations or by the licence or lease, shall be preserved until the expiration of ninety days—

- (a) from the date of the receiving order; or
- (b) from the date of the appointment of any manager of the estate of the lunatic so found; or
- (c) from the date of appointment of a liquidator by the court,

as the case may be :

Provided that the Commissioner may for good and sufficient cause extend the time.

Government
officers pro-
hibited from
acquiring rights.

81. No person, whether civil or military, while in the service of the Government or of the High Commissioner, shall directly or indirectly acquire or hold any right or interest under any prospecting right, exclusive prospecting licence, location or mining lease, and any right, licence, location or lease or other document or transaction purporting to confer any such right or interest on any such officer shall be null and void: Provided that a temporary employee may retain rights and interests acquired prior to accepting Government employment.

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Mining

No. XXIX

82. (1) In the event of the discovery of minerals by any person in the service of the Government or of the High Commissioner, the discoverer may peg, in the manner prescribed for pegging a location, an area, to be called a "Government Protection Area" not exceeding one square mile. Such discovery and pegging shall be forthwith reported to the Commissioner, and no person may thereafter prospect in such area without the consent of the Commissioner.

Discovery of mineral by Government servant.

(2) Notwithstanding the provisions of this Ordinance, authority to mine in any such Government Protection Area may be granted by the Governor in Council to such persons and subject to such terms and conditions as he may think fit.

83. Any person who shall place or deposit or be accessory to the placing or depositing of any minerals in any place with the intent to mislead any persons as to the payable nature of such place, or who shall mix or cause to be mixed with any ore, any valuable metal or substance whatsoever that will increase the value or in any way change the nature of the said ore, with intent to deceive, cheat or defraud shall, on conviction, be liable to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

Salting.

84. Any person who in connexion with any return, statement or document in respect of which information is or may be required to be given under this Ordinance or the regulations wilfully or recklessly gives false information or makes a false statement, whether oral or in writing, shall, if no other penalty is specifically provided, be liable to a fine not exceeding three hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

Penalty for false return, etc.

85. Any person who shall wilfully obstruct, hinder, assault or resist an officer, or any person duly authorized by an officer or a person authorized by this Ordinance to exercise any right or power or execute any duty or shall wilfully disobey an officer's order other than an order for the payment of money, or shall be guilty of contempt of the Commissioner or other officer when acting in a judicial capacity, shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

Obstructing officer.

Penalty for interfering with mining, etc.

86. Any person who—

- (a) interferes with any prospecting or mining operations authorized by or under this Ordinance;
- (b) obstructs any person in the exercise of any right conferred by or under this Ordinance;
- (c) interferes with any machinery, plant, works or property established on, in, under or over any land in exercise of a right conferred by or under this Ordinance;
- (d) without lawful authority shall wilfully break, deface or remove, or in any other way interfere with any boundary mark, beacon, pillar or post erected for any of the purposes of this Ordinance or under the regulations.

shall be liable to a fine not exceeding three hundred pounds or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

Power of Commissioner to conduct prosecutions.

87. The Commissioner or any officer of the Mines Department may conduct or assist in conducting a prosecution for any offence against this Ordinance.

Power to arrest.

88. (1) The Commissioner or any officer of the Mines Department may without warrant arrest and search any person whom he may find committing, or whom he reasonably suspects of having committed, an offence against this Ordinance: Provided that the person arrested shall be taken, with as little delay as possible, before a magistrate to be dealt with according to law.

(2) Any person who on any mining property fights or behaves in such a manner as to be likely to cause injury to himself or to any other person or to cause damage to any machinery, plant or workings, shall be guilty of an offence against this Ordinance and may be arrested by any police officer without warrant or may be apprehended by the owner or occupier of the mining property on which the offence is committed or by any servant authorized by such owner or occupier and such person, when so apprehended, shall be handed over to the nearest police officer without unnecessary delay.

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No. XXIX

89. (1) The holder of an exclusive prospecting licence or location or a lessee shall, at the time he registers such licence, location or lease, furnish to the Commissioner his permanent address in the Colony and if thereafter such holder or lessee changes his address he shall forthwith send a notification of such change to the Commissioner.

Address and service on holder of lease, etc.

(2) Where under this Ordinance or under the regulations or under any regulations made under the Ordinance repealed by this Ordinance which are still subsisting, the Commissioner is required to serve any notice, demand or other communication, such notice, demand or other communication shall be deemed to have been duly served if sent by registered post to the last address in the Colony (furnished to the Commissioner) of the person upon whom such notice, demand or other communication is required to be served.

(3) The provisions of sub-section (2) of this section shall apply in like manner to any notice, demand or other communication which the Commissioner may, in his discretion, serve upon any person.

90. A copy of any entry in any mining register purporting to be signed by the Commissioner or by any officer of the Mines Department authorized by him and certified to be correct by the person signing it and an assay certificate signed by the Government Assayer and certified by him to be correct, shall be receivable in evidence without further proof in all courts in the Colony and in any proceedings instituted under the provisions of section 63 of this Ordinance:

Copy of mining register and assay certificates receivable in evidence.

Provided that where any party proposes to produce such assay certificate by virtue of the provisions of this section, he shall give notice to the other party not less than fourteen days before the date of hearing of his intention so to do and such other party may give notice to the party purporting so to do requiring him to produce the assayer at the hearing for the purposes of cross-examination and failure to produce such assayer shall, in the absence of just cause or excuse which is reasonable in the circumstances, render such certificate inadmissible.

91. Any person who commits or is guilty of an offence against, contravenes or fails to comply with any of the provisions of, this Ordinance or of the regulations or of any

General penalty.

regulations made under the Ordinance repealed by this Ordinance which are still subsisting, for which a penalty is not expressly provided shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Power to make regulations.

92. (a) The Governor in Council may make regulations in connexion with or for all or any of the matters or purposes following:—

- (1) the manner in which applications for any right, licence, location or lease, which may be granted under this Ordinance shall be made and the forms to be used;
- (2) the information to be supplied by the applicants;
- (3) the classes of locations and leases;
- (4) the manner in which locations shall be pegged;
- (5) the manner in which protection areas may be acquired, their size and shape, the fees payable in respect thereof and the period for which they may be held;
- (6) the shape of the areas over which exclusive prospecting licences may be granted;
- (7) the size and shape of the areas over which locations or mining leases may be granted;
- (8) the manner in which areas and boundaries shall be surveyed, marked and beacons and the fees payable in respect of such survey when performed by the Government of the Colony;
- (9) the working and any other conditions to be applied to licences, locations and mining leases;
- (10) the construction and use of roads, tramways and railways;
- (11) the construction and erection of houses, pits, shafts, machinery and other works to be used for prospecting or mining purposes;
- (12) the fencing off or rendering secure of any shaft, well, trench, tunnel, drive or other works constructed, erected or made for prospecting or mining purposes;
- (13) the grazing of cattle or other animals and the cutting down and use of timber for the purpose of carrying on prospecting and mining operations;

(14) the safety and health of persons employed in mines and the carrying on of prospecting or mining operations in a safe, proper, sanitary and effectual manner;

(15) the renewal, transfer, assignment and surrender of any licence, location or lease or any rights thereunder;

(16) the registration of exclusive prospecting licences, locations and mining leases and instruments under which any right or interest thereunder is transferred or surrendered and the fees payable on such registration;

(17) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of exclusive prospecting licences, locations and mining leases;

(18) the rates of royalties to be paid to the Government of the Colony, the method of calculation of the amount of such royalties and the manner and time of payment thereof;

(19) the counting of development done on the area of one licence, location or lease towards development due to be done on the area of another licence, location or lease in the same ownership;

(20) the disposal of any poisonous or noxious products the result of mining operations;

(21) regulating the occasion on which the Commissioner may require a survey to be made for the prevention of differences as to boundaries or for the settlement of disputes and for the payment of the cost of such survey;

(22) prescribing a penalty, not exceeding five pounds, which may be imposed by any officer of the Mines Department for breach of any regulation made under this section and the manner in which such penalty shall be paid;

(23) the procedure on an appeal to the Governor;

(24) the fees to be paid in respect of any matter or thing done under this Ordinance;

(25) the contribution by parties benefited of a fair share of the cost of pumping in cases where pumping in one mine benefits other mines;

(26) the defiling or wasting of water, wherever situated and wherever obtained;

(27) the form and issue of export permits;

(28) generally for prescribing anything which may be prescribed under this Ordinance and for the carrying into effect the purposes of this Ordinance.

(b) Any such regulation may require acts or things to be performed or done to the satisfaction of an officer appointed under the provisions of section 9 of this Ordinance, and may empower such officer to issue orders either verbally or by notice requiring acts and things to be performed or done, prohibiting acts and things from being performed or done, imposing conditions, and prescribing periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

Repeal.
No. 61 of 1933.

93. The Mining Ordinance, 1933, is hereby repealed: Provided that all prospecting, mining and other rights and titles granted under the provisions of that Ordinance shall be deemed to have been granted under, and to be subject to, the provisions of this Ordinance.

SCHEDULE

<i>Injury</i>	<i>Percentage of incapacity</i>
Loss of two limbs	} 100
Loss of both hands or of all fingers and thumbs ..	
Loss of both feet	
Total loss of sight	
Total paralysis	
Injuries resulting in being permanently bedridden ..	
Any other injury causing permanent total disablement	} 60
Loss of arm at shoulder	
Loss of arm between elbow and shoulder	
Loss of arm at elbow	
Loss of arm between wrist and elbow	
Loss of hand at wrist	
Loss of four fingers and thumb of one hand	
Loss of four fingers	
Loss of thumb—both phalanges	
one phalanx	

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SCHEDULE—(Contd.)

<i>Injury</i>	<i>Percentage of incapacity</i>
Loss of index finger—three phalanges	10
two phalanges	8
one phalanx	4
Loss of middle finger—three phalanges	6
two phalanges	4
one phalanx	2
Loss of ring finger—three phalanges	5
two phalanges	4
one phalanx	2
Loss of little finger—three phalanges	4
two phalanges	3
one phalanx	2
Loss of metacarpals, first or second (additional), third, fourth or fifth (additional)	2
Loss of leg, at or above knee	70
Loss of leg, below knee	40
Loss of foot	40
Loss of toes—all of one foot	15
great, both phalanges	5
one phalanx	2
other than great, if more than one toe lost, each	1
Loss of sight of one eye	30
Total loss of hearing	50

Total permanent loss of the use of a member shall be treated as loss of such member.

In the case of a right-handed workman, an injury to the left arm or hand, and in the case of a left-handed workman, to the right arm or hand, shall be rated at 90 per cent of the above percentages.

Where there is a loss of two or more parts of a hand, the percentage of incapacity shall not be more than the percentage specified for the whole hand.

ORDINANCE No. XXX of 1940

Assented to in His Majesty's name this twenty-fourth day
of August, 1940.

HENRY MOORE,
Governor.

*See Proc. No. 9/46 L. 73 - In force
until 31/12/47*

[24TH AUGUST, 1940.] Date of assent.

An Ordinance to Amend the Land and Agricultural Bank (Amendment) Ordinance, 1940

12th August, 1940

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 and Agricultural Bank (Amendment No. 3) Ordinance, 1940, and shall be read as one with the Land and Agricultural Bank (Amendment) Ordinance, 1940, hereinafter referred to as the Principal Ordinance and shall be deemed to have come into operation on the date of commencement of the Principal Ordinance.

Short title and
commencement.

No. 14 of 1940.
2. Sub-section (1) of section 2 of the Principal Ordinance is hereby amended by inserting the words "shall not exceed fifty per centum of the estimated sale value of the crops and" between the word "purpose" and the word "shall" which occur in the fourth line of paragraph (a) thereof.

Amendment of
section 2 (1) of
the Principal
Ordinance.
3. Sub-section (3) of section 6 of the Principal Ordinance is hereby amended by deleting therefrom the words "and conclusive and shall not be questioned in any court of law" which occur in the second and third lines thereof.

Amendment of
section 6 (3) of
the Principal
Ordinance.
4. The Principal Ordinance is hereby amended by inserting therein, immediately after section 12 thereof, the following new section:—

Amendment of
the Principal
Ordinance.

"13. This Ordinance shall continue in force during
the present war, and shall then expire:

Duration.

 Provided that the Governor may by proclamation with the approval of the Legislative Council declare that this Ordinance shall remain in force until a date to be fixed in such proclamation."



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, December 17, 1940

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ORDINANCE No. XXXI of 1940

Assented to in His Majesty's name this seventh day of December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

An Ordinance to Amend the Traffic Ordinance, 1928

1st January, 1941

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 Traffic (Amendment) Ordinance, 1940, and shall be read as one with the Traffic Ordinance, 1928, hereinafter referred to as the Principal Ordinance, and shall come into operation on the first day of January, 1941.

Short title and date of commencement. No. 26 of 1928.

2. Section 3 of the Principal Ordinance is hereby amended by inserting therein, between the word "vehicle" and the word "duly" which occur in the eighth line thereof, the commas and words ", other than a vehicle the motive unit of which uses any power fuel other than dangerous petroleum,".

Amendment of section 3 of the Principal Ordinance.

3. Paragraph (1) of the Schedule to the Principal Ordinance is hereby amended by inserting therein, immediately after sub-paragraph (c) thereof, the following new sub-paragraph—

Amendment of the Schedule to the Principal Ordinance.

"(d) for a motor vehicle with pneumatic tyres, being a vehicle the motive unit of which uses any power fuel other than dangerous petroleum, double the rates specified in sub-paragraph (c) of this paragraph."

ORDINANCE No. XXXII of 1940

Assented to in His Majesty's name this seventh day of December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

An Ordinance to Amend the Widows and Orphans Pension Ordinance

1st October, 1939

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 Widows and Orphans Pension (Amendment) Ordinance, 1940, 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, and shall be deemed to have come into operation on the first day of October, 1939.

Short title and commencement.

Cap. 34.

2. Section 4 of the Principal Ordinance is hereby amended as follows:—

Amendment of section 4 of the Principal Ordinance.

(a) by adding the following new paragraph immediately after paragraph (f) of sub-section (1) thereof:—

“(g) Persons who are contributors to the Kenya and Uganda Railways and Harbours Superannuation Fund, other than those persons who at the date of commencement of their membership of the Superannuation Fund were contributors under this Ordinance.”;

and

(b) by deleting the words “outside East Africa” which occur in the third and fourth lines of the definition of “approved scheme” in sub-section (3) thereof.

ORDINANCE No. XXXIII of 1940

Assented to in His Majesty's name this seventh day of December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

**An Ordinance to Amend the Land and Water
Preservation Ordinance, 1940**

7th December, 1940

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 and Water Preservation (Amendment) Ordinance, 1940, and shall be read as one with the Land and Water Preservation Ordinance, 1940, hereinafter referred to as the Principal Ordinance.

Short title.
No. 4 of 1940.
2. Section 2 of the Principal Ordinance is hereby amended by inserting therein the following new definitions:—

Amendment of
section 2 of
the Principal
Ordinance.

No. 3 of 1931.

“Bank” means the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;

“catchment area” means any area declared by the Director, by notice in the Gazette, to be a catchment area.
3. Sub-section (1) of section 3 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and
replacement of
section 3 (1) of
the Principal
Ordinance.

“Power to
make rules.

3. (1) The Governor in Council may make rules, all or any of which shall apply to such areas as the Governor in Council may by notice in the Gazette appoint, for all or any of the following purposes:—

(a) prohibiting, regulating and controlling—

 - (x) the breaking up or clearing of land for cultivation or for any other purpose;
 - (y) the grazing or watering of live stock;
or
 - (z) the firing, clearing or destruction of vegetation,

when such prohibiting, regulating and controlling is deemed by the Governor in Council to be necessary—

- (i) for the protection of land against storms, winds, rolling stones, floods and landslips;
- (ii) for the preservation of the soil on ridges, on slopes and in valleys;
- (iii) for preventing the formation of gullies;
- (iv) for the protection of land against erosion or the deposit thereon of sand, stones or gravel;
- (v) for the maintenance of water in a body of water;
- (vi) for the protection of roads, bridges, railways and other lines of communication;
- (vii) for the preservation of public health;
- (viii) generally in the public interest;

(b) requiring, regulating and controlling—

- (i) the afforestation or re-afforestation of land;
- (ii) the protection of slopes and catchment areas;
- (iii) the construction of contour banks and terraces;
- (iv) the repairing of gullies;

(c) generally for the better carrying out of the purposes of this Ordinance.”

4. Section 4 of the Principal Ordinance is hereby repealed and the following sections are substituted therefor:—

“4. (1) Where any person is required, under the provisions of this Ordinance, or of any Rules made thereunder, to do any act or thing which may involve him in the expenditure of any money, he may, subject to the provisions of any Regulations made under the provisions of section 4D of this Ordinance, apply to the Bank for an advance of money to enable him to do such act or thing.

Repeal and replacement of section 4 of the Principal Ordinance.
Application for advances.

(2) An application for an advance shall be made to such person and in such manner as may be prescribed.

4A. Any advances under the provisions of this Ordinance shall—

Source,
interest on,
and payment
of, advances.

(a) be made from funds provided for the purpose by the Legislative Council of the Colony;

(b) bear interest at such rate per annum as the Governor in Council may, from time to time, determine;

(c) be repaid in equal half-yearly instalments of capital and interest within such period, not exceeding thirty years, as may be agreed upon between the applicant and the Bank:

Provided that nothing in this paragraph contained shall preclude any person from repaying any balance due from him to the Bank at any time before the expiration of the period so agreed upon.

4B. (1) All moneys advanced under the provisions of this Ordinance, together with any interest thereon and all charges incidental thereto and to the repayment thereof, shall be a charge upon the land in respect of which the advance has been made; and, notwithstanding the provisions of any other law for the time being in force in the Colony or of any rule of law or equity or of any agreement to the contrary, shall have priority over all other mortgages or charges affecting the land in respect of which the advance has been made whether or not such mortgages or charges exist at the date of the advance or otherwise:

Priority
of advances.

Provided that, where the Bank proposes to make an advance on land which is subject to a statutory or contractual mortgage or charge, the Bank shall in writing advise the mortgagee or chargee, as the case may be, who shall, if he objects to the making of the advance, be given an opportunity of being heard before the advance is made.

(2) The Bank may, in addition to the security conferred by sub-section (1) of this section, require the applicant to give to the Bank such collateral security as the Bank may think fit.

Collateral
security.

Registration of advances.

4C. As soon as possible after an advance has been approved by the Bank, the Secretary to the Bank shall fill up the notification in the form in the Schedule hereto and shall sign and forward the same to the Registrar of Titles who shall forthwith, without charge, register such notification against the title affected.

Power to make Regulations.

4D. The Governor in Council may make Regulations governing the making of advances under the provisions of this Ordinance and, without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) prescribing the manner in which applications for advances shall be made;
- (b) prescribing the purposes for, and the terms and conditions on which, advances may be made;
- (c) prescribing the maximum amount of, and the rate of interest to be charged on, advances;
- (d) appointing an advisory Board or Boards to consider and report upon, and to make recommendations in regard to, applications for advances under the provisions of this Ordinance.

Regulations to be placed before Legislative Council.

4E. All Regulations made under the provisions of section 4D of this Ordinance shall be laid before the Legislative Council as soon as conveniently may be after they are made, and if the Legislative Council, within a period of forty days beginning with the day on which such Regulations are laid before it, resolves that any such Regulation shall be annulled or amended, such Regulation shall thenceforth be deemed to be annulled or amended, but without prejudice to the validity of anything previously done thereunder or to the making of new Regulations.”

Addition of Schedule to the Principal Ordinance.

5. The Principal Ordinance is hereby amended by adding thereto the following Schedule:—

SCHEDULE

Name and address of applicant	Name of Farm	Land Office Number	Amount of Advance	Date of Advance

ORDINANCE No. XXXIV of 1940

Assented to in His Majesty's name this seventh day of December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

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

7th December, 1940

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 Local Government (District Councils) (Amendment) Ordinance, 1940, and shall be read as one with the Local Government (District Councils) Ordinance, 1928, hereinafter referred to as the Principal Ordinance. Short title.
No. 21 of 1928.

2. Paragraph (a) of sub-section (1) of section 6 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor:— Repeal and replacement of section 6 (1) (a) of the Principal Ordinance.

“(a) Such number of elected European members not being less than ten, as the Governor may, by proclamation, appoint, to be elected as hereinafter provided:

Provided that, if a District Council be constituted for the rural area of the administrative district now known as the Kisumu-Londiani District, there shall be, in addition, one elected Indian member of such District Council:

Provided further that, if at any time, no person shall stand for election by virtue of this paragraph or if, having been elected, the member so elected shall resign or shall refuse to serve on the Council, and no other person shall stand for election, the Council shall nevertheless be deemed to be duly constituted under this Ordinance, *but in such case the Governor may, if he shall deem it desirable so to do, nominate a fit and proper person to be a member of the Council in the place of such elected member.*

*Ord. No. 14/40
h. 48-sec. 2*

3. Sub-section (1) of section 38 of the Principal Ordinance is hereby amended by deleting the words “next ordinary meeting of the Council after such continued absence” which occur in the fifth and sixth lines thereof and by substituting Amendment of section 38 (1) of the Principal Ordinance.

No. XXXIV

Local Government (District Councils)

1940

therefor the words "conclusion of the third ordinary meeting of the Council which the absent member shall in succession have failed to attend".

Amendment of section 57 of the Principal Ordinance.

4. Section 57 of the Principal Ordinance is hereby amended by adding thereto, immediately after paragraph (6) thereof, the following new paragraph:—

"(6A) To establish and maintain pounds within the district and to make such charges in connexion therewith as may be prescribed."

Amendment of section 66 of the Principal Ordinance.

5. Section 66 of the Principal Ordinance is hereby amended—

(a) by deleting therefrom paragraph (1) thereof and by substituting therefor the following:—

"(1) For regulating any of the things which the Council is empowered under this Ordinance to do, establish, maintain or carry on, and, where the Council is empowered to make any charge in respect of any such thing, prescribing such charges."; and

(b) by adding thereto, immediately after paragraph (10) thereof, the following new paragraph:—

Replaced by Ord. 86 (1946)
 "(11) For prohibiting, restricting or regulating the quarrying of stone, lime, clay or other material on any premises;"

Amendment of section 116 of the Principal Ordinance.

6. Section 116 of the Principal Ordinance is hereby amended by adding thereto, immediately after sub-section (4) thereof, the following new sub-section:—

"(5) The Council shall pay to the Governor, within three months from the date of the signing and certifying by the inspector of the accounts of the Council for any financial year, such sum as the Governor may from time to time determine, not being more than one per centum of the total expenditure of the Council which has been brought to account and certified by the inspector for that financial year:

Provided that where for the purpose of an effective audit, the accounts of the Council require to be completed, adjusted or balanced by the inspector, a proportionately higher fee, as the Governor may determine, shall be charged and paid."

ORDINANCE No. XXXV of 1940

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent

An Ordinance to Amend the Employment of Servants Ordinance, 1937

7th December, 1940

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 Employment of
Servants (Amendment) Ordinance, 1940, and shall be read as
one with the Employment of Servants Ordinance, 1937, herein-
after referred to as the Principal Ordinance.

Short title.

No. 2 of 1938.

2. The Principal Ordinance is hereby amended—

Amendment of
the Principal
Ordinance.

(a) by deleting the word and comma "Arabs," where they
occur in section 2, sub-section (1) of section 38 and
paragraph (b) of section 77;

(b) by deleting the word and comma "Arab," where they
occur in section 2, section 11, sub-section (3) of
section 38, section 40 and sub-section (2) of section
73;

(c) by deleting the words and comma "an Arab," where
they occur in section 4, section 5 and sub-section (2)
of section 73;

(d) by deleting the words "an Arab or" where they occur
in section 19; and

(e) by deleting the words and commas "an Arab, a
Malagasy," where they occur in section 21 and by
substituting therefor the words and comma "A
Malagasy,".

ORDINANCE No. XXXVI of 1940

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

**An Ordinance to Amend the Shop Hours
Ordinance, 1925**

7th December, 1940

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, 1940, and shall be read as one with
the Shop Hours Ordinance, 1925, hereinafter referred to as the
Principal Ordinance.

Short title.

No. 24 of 1925.

2. Section 3 of the Principal Ordinance is hereby
amended—

Amendment of
section 3 of
the Principal
Ordinance.

(a) by deleting from the definition of "public holiday" the
figures "1912" which occur in the second line of the
definition and by adding thereto the following as a
marginal note:—"Cap. 30.";

(b) by deleting therefrom the definition of "Shop
assistant" and by substituting therefor the following
definition:—

" 'Shop assistant' means any person wholly
or principally employed in a shop in connexion
with the serving of customers or the receipt of
orders or the despatch of goods."

3. Section 5 of the Principal Ordinance is hereby
amended—

Amendment of
section 5 of
the Principal
Ordinance.

(a) by deleting therefrom the semi-colon which occurs at
the end of sub-paragraph (d) of sub-section (1) thereof
and by adding thereto the words and full stop "or
public holiday.";

(b) by deleting therefrom sub-paragraph (e) of sub-section
(1) thereof;

(c) by inserting between the word "Sunday" and the semicolon which occur in the second line of subparagraph (b) of sub-section (2) thereof the words "or public holiday";

(d) by deleting therefrom sub-sections (3) and (4) thereof and substituting therefor the following sub-sections:—

"(3) Notwithstanding the provisions of paragraphs (a) and (b) of sub-section (1) of this section, the working hours of any shop assistant may, solely for the purpose of stocktaking, be extended for not more than eight hours in any one week:

Provided that such working hours shall not, in any case, be extended for more than sixty hours in any one year.

(4) (a) Notwithstanding the provisions of paragraph (b) of sub-section (1) of this section an occupier, upon giving reasonable notice to the officer in charge of the police station of the district in which the shop is situate of the names of the shop assistants concerned and the dates upon which he intends to extend their working hours, may (on not more than two occasions in any year and solely for the purpose of stocktaking) permit such shop assistants to work on a Saturday afternoon and/or on the following Sunday. The provisions of this paragraph shall not apply to any Saturday and/or Sunday where the Monday immediately following such Sunday is a public holiday.

(b) An occupier who avails himself of the provisions of paragraph (a) of this sub-section shall not be permitted to extend the hours of his shop assistants under the provisions of sub-section (3) of this section."

4. Section 8 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

"8. All shops in townships and other areas to which this Ordinance applies shall be closed on Sundays and on public holidays:

Provided that, where any local authority applies for exemption from closing on a Sunday or on a public holiday, the Governor in Council may grant such exemption

Repeal and replacement of section 8 of the Principal Ordinance.

Sunday and public holiday closing.

1940

Shop Hours

No. XXXVI

either as to the whole or part of a Sunday or public holiday, as the case may be, or to both, and either generally or in respect of any particular class of shops, trades or businesses.”

5. Section 18 of the Principal Ordinance is hereby amended by adding thereto at the end thereof the following new sub-section:—

Amendment of section 18 of the Principal Ordinance.

“(5) shall be deemed to preclude a shop assistant, who is employed in a shop dealing in industrial machinery, from entering such shop on a weekly half-holiday, a Sunday or a public holiday solely for the purpose of supplying to a customer any tools, spares and equipment required in the case of a bona fide breakdown of essential machinery.”

6. Section 19 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 19 of the Principal Ordinance.

“19. Sections 7, 8 and 12 of this Ordinance shall not 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.”

Certain provisions of Ordinance not to apply to motor, cycle and aircraft trades.

ORDINANCE No. XXXVII of 1940

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of Assent.

**An Ordinance to Amend the Native Authority
Ordinance, 1937**

7th December, 1940

Date of com-
mencement.

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 Authority
(Amendment) (No. 2) Ordinance, 1940, and shall be read as
one with the Native Authority Ordinance, 1937, hereinafter
referred to as the Principal Ordinance.

Short title.

No. 2 of 1937.

2. Section 6 of the Principal Ordinance is hereby
amended—

Amendment of
section 6 of
the Principal
Ordinance.

(a) by substituting a comma for the full stop which occurs
at the end of sub-section (2) thereof and by adding
immediately after such comma the words "or, if the
person so arrested is within the limits of the Pro-
tectorate, before the district officer, liwali or
mudir.";

(b) by substituting a comma for the full stop which occurs
at the end of sub-section (3) thereof and by adding
immediately after such comma the words "or, if
the native so arrested is within the limits of the Pro-
tectorate, before the district officer, liwali or
mudir."; and

(c) by deleting the words "and shall forthwith
report such seizure and detention to the district
officer" which occur in the sixth, seventh and
eighth lines of sub-section (4) thereof and by sub-
stituting therefor the words "liwali or mudir, as the
case may be, and shall forthwith report such seizure
and detention to the district officer, or, if such cattle,
live stock or other property seized and detained is
within the limits of the Protectorate, to the district
officer, liwali or mudir.".

Amendment of section 9 of the Principal Ordinance.

3. Paragraph (e) of section 9 of the Principal Ordinance is hereby amended by deleting the words "or district officer" which occur in the third line thereof and by substituting therefor the commas and words ", district officer, liwali or mudir".

Amendment of section 10 of the Principal Ordinance.

4. Section 10 of the Principal Ordinance is hereby amended by deleting the words "or district officer" wherever such words occur therein and by substituting therefor the commas and words ", district officer, liwali or mudir".

Amendment of section 11 of the Principal Ordinance.

5. Section 11 of the Principal Ordinance is hereby amended by deleting the words "or district officer" which occur in the fourth line thereof and by substituting therefor the commas and words ", district officer, liwali or mudir".

Amendment of section 13 of the Principal Ordinance.

6. Section 13 of the Principal Ordinance is hereby amended—

- (a) by inserting the comma and words ", liwali or mudir" between the word "officer" and the comma which occur in the second line of paragraph (a) thereof;
- (b) by deleting the words "or district officer" wherever such words occur in paragraphs (a), (d) and (e) thereof and by substituting therefor the commas and words ", district officer, liwali or mudir"; and
- (c) by deleting the words "or a district officer" which occur in the first and second lines of paragraph (c) thereof and by substituting therefor the commas and words ", district officer, liwali or mudir".

Amendment of section 14 of the Principal Ordinance.

7. Section 14 of the Principal Ordinance is hereby amended—

- (a) by inserting the comma and words ", liwali or mudir" between the word "officer" and the word "in" which occur in the fifth line thereof; and
- (b) by deleting the word "prescribe" which occurs in the fourth line of paragraph (1) thereof and by substituting therefor the word "decide".

Powers limited to certain liwalis and mudirs and to the Protectorate only.

8. The powers conferred and duties imposed upon liwalis and mudirs by this Ordinance shall only be exercised by such of the liwalis and mudirs as are specially appointed by the Provincial Commissioner of the Coast Province and within the limits of their respective jurisdictions in the Protectorate.

ORDINANCE No. XXXVIII of 1940

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

**An Ordinance to Amend the Native Tribunals
Ordinance, 1930**

7th December, 1940

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
(Amendment) Ordinance, 1940, and shall be read as one with
the Native Tribunals Ordinance, 1930, hereinafter referred
to as the Principal Ordinance.

Short title.
No. 39 of 1930.

2. Section 13 of the Principal Ordinance is hereby
amended by inserting the commas and words “, liwali, mudir”
between the word “officer” and the comma which occur in
the second line of paragraph (b) thereof.

Amendment of
section 13 of
the Principal
Ordinance.

3. Section 18 of the Principal Ordinance is hereby
repealed and the following section is substituted therefor:—

Repeal and re-
placement of
section 18 of
the Principal
Ordinance.

“18. (1) A native tribunal may order any person con-
victed by it of an offence to pay either in addition to or
in substitution for any other penalty imposed—

Power to award
costs or
compensation.

(a) costs properly incurred by any person in the
prosecution;

(b) compensation to any person for any loss or
injury caused by the act or omission in respect
of which the conviction has been entered, on the
condition that such person, if he agrees to accept
such compensation, shall not institute or main-
tain any suit for the recovery of damages for the
loss or injury sustained by him by reason of
such act or omission:

Provided that no such payment shall be required to be made until the period allowed for an appeal under section 34 of this Ordinance has expired, or, if an appeal has been filed, until such appeal has been dismissed.

(2) A native tribunal may, subject to the provisions of the proviso to sub-section (1) of this section, order that the costs or compensation awarded under the provisions of that sub-section shall be paid at such time or times and by such instalments and in kind or otherwise as it shall think fit, and, in default of payment, that the amount of the costs or compensation or of the instalment, as the case may be, shall be levied by distress on, and the sale of, the movable or immovable property of the offender, or in default of distress that the offender shall, subject to the provisions of section 28 of the Penal Code, undergo a term of imprisonment."

No. 10 of 1930.

Amendment of section 24 of the Principal Ordinance.

4. Section 24 of the Principal Ordinance is hereby amended—

(a) by inserting the words "or to a mudir or a liwali" between the word "appeal" and the word "or" which occur in the fourth line thereof; and

(b) by substituting the words "district officer" for the words "district commissioner" which occur in the fourth line thereof.

Amendment of section 25 of the Principal Ordinance.

5. Section 25 of the Principal Ordinance is hereby amended by inserting the words "or a liwali or mudir" between the word "officer" and the word "shall" which occur in the third line thereof.

Amendment of section 33 of the Principal Ordinance.

6. Section 33 of the Principal Ordinance is hereby amended by adding thereto, immediately after sub-section (2) thereof, the following new sub-section:—

"(3) The Provincial Commissioner of the Coast Province may appoint any liwali or mudir in the Protectorate to be a court of appeal and may direct that an appeal shall lie to such liwali or mudir in respect of all or any of the cases of native tribunals in the district within which such liwali or mudir exercises jurisdiction."

1940

Native Tribunals

No. XXXVIII

7. Section 34 of the Principal Ordinance is hereby amended—

Amendment of
section 34 of
the Principal
Ordinance.

(a) by deleting the words "sub-section (2) of section 33, to a district officer" which occur in the sixth and seventh lines of sub-section (1) thereof and by substituting therefor the words "sub-sections (2) and (3) of section 33, to a district officer or to a liwali or mudir, as the case may be";

(b) by inserting the comma and words ", or a liwali or mudir" after the words "district officer" wherever such words occur in sub-sections (2) and (4) thereof; and

(c) by deleting the commas and words ", whether made or given upon appeal from a native tribunal of the first instance or upon appeal from a native court of appeal," which occur in the second, third and fourth lines of sub-section (3) thereof and by substituting therefor the comma and words ", liwali or mudir made or given under the provisions of this section".

8. Section 37 of the Principal Ordinance is hereby amended by inserting the words and commas "a mudir, a liwali," between the comma which occurs after the word "appeal" and the letter "a" in the first line thereof.

Amendment of
section 37 of
the Principal
Ordinance.

See Ser. 938 + 1000 - 2/279

153 - 1000/47 p. 279

966/47 p. 243

1013/48 p. 370

1054/48 p. 46

1109/48 p. 474

653/49 p. 280

609/49 p. 385

1172/50 p. 504

915/51 p. 287

1187/51 p. 42 (Inst.)

1485/51 p. 470 (Inst.)

1153/52 p. 533 (Inst.)

612/54 p. 243 (Inst.)

1187/51 p. 42 (Inst.)

579/53 p. 241 (Inst.)

580/53 p. 247 (Inst.)

*Amended by Ord. 51/46***ORDINANCE No. XXXIX of 1940**

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

**An Ordinance to give Legislative Effect for a limited
period to Orders of the Governor in Council
imposing new or varying existing duties of
Customs and Excise**

7th December, 1940

Date of
commencement.

WHEREAS it is expedient to enact provisions where-
under, if a Bill to impose or vary customs or excise duties is
proposed to be introduced into the Legislative Council,
adequate protection may be given to the public revenue:

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 Customs and
Excise Duties (Provisional Collection) Ordinance, 1940.

Short title.

2. If the Governor in Council at any time approves of
the introduction into the Legislative Council of a Bill
whereby, if such Bill were passed into law, a customs or
excise duty would be imposed on any article or whereby the
customs or excise duty previously payable on any article
would be varied, the Governor in Council may, subject to
the provisions of this Ordinance and notwithstanding the
provisions of the Customs Tariff Ordinance, 1930, or the
Excise Duties Ordinance, 1935, or the Beer Ordinance, issue
an order to the Commissioner of Customs to charge, levy
and collect on such article the duty set forth in such Bill in
lieu of the duty (if any) payable thereon under the existing
law.

Power of
Governor in
Council.

No. 1 of 1930.
No. 40 of 1935.
Cap. 100.

3. (1) Every order made under section 2 of this Ordin-
ance shall come into force on a day to be named therein,
which day shall not be more than eight weeks before the

Duration
of order.

introduction into the Legislative Council of the Bill in respect of which such order was issued, and shall have effect and force of law so long as the said order shall remain in force.

(2) Every such order shall expire and cease to be in force—

(a) on the rejection by the Legislative Council of the Bill in respect of which such order was issued, or on the withdrawal of such Bill, or on the consideration of such Bill by the Legislative Council being adjourned *sine die*; or

(b) on the expiration of ~~ten~~ weeks after the date on which the order is expressed to take effect; or

(c) on such Bill, with or without modification, coming into operation by the assent of the Governor being given thereto.

Refund of
excess duties.

4. So much of any duty as shall have been paid on any article under the provisions of this Ordinance as may be in excess of the duty payable on such article immediately after the expiration of any order made under the provisions of this Ordinance shall be repaid to the person who paid the same.

ORDINANCE No. XL of 1940

Assented to in His Majesty's name this seventh day of
December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

**An Ordinance to Provide for the Supply of a Further
Sum of Money for the Service of the Year
Ended 31st December, 1939**

7th December, 1940

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 1939 Supple- Short title.
mentary Appropriation Ordinance, 1940.
2. The public revenue for the period 1st January to 31st Public revenue
December, 1939, of the Colony and Protectorate of Kenya is charged.
hereby charged towards the service of the period 1st January
to 31st December, 1939, with a further sum of two hundred
and forty-seven thousand five hundred and thirty-five pounds,
seven shillings and nineteen cents in addition to the sums pro-
vided by the 1939 Appropriation Ordinance, 1938. No. 46 of 1938.
3. The money granted by this Ordinance shall be Application of
applied to the purposes and services expressed in the Schedule money granted.
hereto.
4. The Accountant General of the Colony and Pro- Accountant
tectorate of Kenya is hereby given authority for having paid General's
out of the revenue of the Colony and Protectorate of Kenya, authority for
for the several services specified in the Schedule hereto, the payment.
said sum of two hundred and forty-seven thousand five
hundred and thirty-five pounds, seven shillings and nineteen
cents which have come in course of payment during the period
1st January to 31st December, 1939.

No. of Head		Kenya Expenditure				Amount		
						£	s.	cts.
3A.	Administration Extraordinary	..	..	..	..	38,225	10	07
4A.	Agriculture Extraordinary	..	..	..	..	13,274	12	83
6.	Civil Aviation	..	..	..	..	1,515	9	78
6A.	Civil Aviation Extraordinary	..	..	..	..	21	8	78
8.	Conference of E.A. Governors	..	..	..	..	4	3	57
9A.	Customs Extraordinary	..	..	..	..	58	6	60
10A.	Education Extraordinary	..	..	..	..	1,723	0	00
14.	Inland Revenue	..	..	..	..	5,744	4	73
16A.	Kenya Royal Naval Volunteer Reserve Extraordinary	..	..	..	..	241	2	42
17A.	Lands and Settlement Extraordinary	..	..	..	..	25	0	00
18A.	Legal Extraordinary	..	..	..	..	103	15	75
19A.	Local Government Contribution to Local Authorities Extraordinary	..	..	..	..	2,462	15	46
20A.	Medical Extraordinary	..	..	..	..	2,175	18	56
22A.	Mining and Geological Extraordinary	..	..	..	..	74	17	66
23.	Miscellaneous Services	..	..	..	..	163	1	48
23A.	Miscellaneous Services Extraordinary	..	..	..	..	26,954	17	02
24A.	Pensions and Gratuities Extraordinary	..	..	..	..	262	10	00
25A.	Police Extraordinary	..	..	..	..	14,917	5	92
26A.	Posts and Telegraphs Extraordinary	..	..	..	..	2,826	11	55
28.	Prisons	..	..	..	..	1,088	10	59
28A.	Prisons Extraordinary	..	..	..	..	149	4	38
29.	Public Debt	..	..	..	..	1,877	17	75
30.	Public Works	..	..	..	..	7,120	14	37
31.	Public Works Recurrent	..	..	..	..	1,382	5	81
34A.	Secretariat Extraordinary	..	..	..	..	6	4	30
35.	Subventions	..	..	..	..	355	19	85
36.	Trade and Information Office	..	..	..	..	145	18	96
37.	Veterinary Services	..	..	..	..	3,718	4	74
37A.	Veterinary Services Extraordinary	..	..	..	..	1,165	4	50
38.	Public Works Extraordinary	..	..	..	..	32,080	3	57
40.	Parliamentary Grant	..	..	..	..	17,840	7	34
	War Expenditure Pay and Allowances K.R.N.V.R.	..	..	..	..	2,477	17	27
	War Expenditure, Civil	..	..	..	..	57,923	8	12
Total Kenya Expenditure						238,106	13	73
41.	Conference of E.A. Governors	..	..	..	..	14	0	99
42.	Customs	..	..	..	..	58	8	76
42A.	Customs Extraordinary	..	..	..	..	33	15	54
43A.	K.R.N.V.R. Extraordinary	..	..	..	..	319	19	48
44A.	Military Extraordinary	..	..	..	..	5,660	13	32
45A.	Posts and Telegraphs Extraordinary	..	..	..	..	55	15	96
46.	Public Debt	..	..	..	..	1	7	26
	War Expenditure Pay and Allowance K.R.N.V.R.	..	..	..	..	3,284	12	15
Total Joint Services Expenditure						9,428	13	46
Total Kenya and Joint Services Expenditure						247,535	7	19

225

Amended Ord. 11/42

ORDINANCE No. XLI of 1940

Assented to in His Majesty's name this third day of December, 1940.

HENRY MOORE,
Governor.

[3RD DECEMBER, 1940] Date of assent.

An Ordinance to Provide for the Insurance of Goods against King's Enemy Risks during the present War

By Notice *3rd Dec. 1940* Date of commencement
11. Jan. 1940

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 War Risks Insurance Ordinance, 1940, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint, and the Governor may appoint different dates for the different provisions of the Ordinance. Short title and date of commencement.

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

"Board" means the Board established under section 3 of this Ordinance;

"goods" means ~~all chattels personal, other than things in action, money and goods specified in the Schedule to this Ordinance;~~ *Replaced by Ord. 11/41.*

~~"King's enemy risks" means the risk of loss or damage to goods—~~ *and liabilities - added by Ord. 11/42, p. 53*

- (a) caused by—
 - (i) the discharge of any missile (including liquids and gas); or
 - (ii) the use of any weapon, explosive or other noxious thing; or
 - (iii) the doing of any other injurious act, either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or
- (b) caused by the impact on any property of any enemy aircraft, or any aircraft belonging to or held by any person on behalf of or for the benefit of His Majesty

or any allied power, or any part of, or anything dropped from, any such aircraft, but does not include the risk of loss or damage to goods seized by the enemy consequent upon an invasion;

“policy” includes a cover note;

“seller of goods” includes a seller of goods acting as an agent;

“supplier of goods” means a person carrying on business in the course of which he supplies goods for the purpose of or in pursuance of a contract made by him for work, labour and materials, *and includes a person who is a commission agent*

31/41

Establishment
of Board.

3. (1) There is hereby established a Board to be known as “the War Risks Insurance Board” which shall consist of—

- (a) one official member to be nominated by the Governor of the Colony, who shall be chairman;
- (b) one official member to be nominated by the Governor of the Protectorate of Uganda;
- (c) one official member to be nominated jointly by the Governor of the Colony and the Governor of the Protectorate of Uganda;
- (d) one member with special knowledge and experience of insurance, to be nominated jointly by the Governor of the Colony and the Governor of the Protectorate of Uganda;
- (e) one member representing commercial and producing interests to be nominated by the Governor of the Protectorate of Uganda; and
- (f) one member representing commercial and producing interests to be nominated by the Governor of the Colony.

(2) The Board shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and may purchase, hold and dispose of land and other property for the purposes of this Ordinance.

(3) The Board may make Standing Orders governing its procedure and the conduct of its business: Provided that four members of the Board shall form a quorum and the chairman shall have a casting vote.

(4) The Board may employ such officers and servants as it may consider necessary for the proper exercise of its functions under the provisions of this Ordinance, and may pay such officers, servants and any persons employed as agents, such remuneration as the Board may determine, and the members of

the Board such allowances and expenses as the Governor of the Colony, with the concurrence of the Governor of the Protectorate of Uganda, may approve.

4. (1) For the carrying out of the provisions of this Ordinance the Board shall prepare and operate a prescribed scheme common to the Colony and to the Protectorate of Uganda (hereinafter referred to as "the scheme"), which shall come into operation as and from a date to be fixed by the Board, whereby the Board shall undertake in relation to persons carrying on business as sellers or suppliers of goods, the liability of insuring such persons against King's enemy risks in respect of goods insurable under this Ordinance which are from time to time owned by such persons in the course of such business.

Board to
prepare
scheme.

1-1-41
p. 924

(2) The scheme shall follow as near as may be, regard being had to local conditions and circumstances, the commodity insurance scheme established under the War Risks Insurance Act, 1939, and shall be such as to secure—

- (a) that any liability of the Board as insurers under the scheme is determined by a policy of insurance issued in the prescribed form and in respect of a prescribed period by a person acting on behalf of the Board;
- (b) that any premium under a policy so issued shall be payable at such rates as may be prescribed; and
- (c) that the amount of any one premium payable under a policy so issued shall not be less than such prescribed sum.

2 & 3 Geo. 6.
Cap. 57.

(3) Different forms of policies, different periods of duration and different rates of premium may be prescribed in relation to different descriptions of goods.

(4) The prescribed forms of policies may be such as to incorporate by reference any provisions contained in the scheme.

(5) Any policy issued in respect of any goods may insure a person who is interested in the goods by reason of any pledge, mortgage or charge as well as the person in relation to whom the goods are insurable under the provisions of this Ordinance.

5. (1) There shall be established a fund common to the Colony and to the Protectorate of Uganda to be known as "the War Risks Insurance Fund" (hereinafter referred to as "the Fund") into which shall be paid all sums received by

Establishment
of Fund.

the Board by virtue of this Ordinance and out of which shall be paid all sums required ~~for the fulfilment by the Board of its obligations or for the repayment of any premiums under this Ordinance or for the payment of the expenses of the Board in the exercise of its functions under this Ordinance.~~

*Replaced by
Ord. 11/42*

(2) If at any time the amount standing to the credit of the Fund is insufficient to meet the liabilities of the Board, funds to meet such liabilities ^{if necessary} shall be provided from the revenues of the Colony and of the Protectorate of Uganda in such proportions as may be agreed upon by the Governors of those territories.

(3) The Fund shall be kept by the Board, and the Board shall prepare an account of the sums received into and paid out of the Fund in each financial year ending the thirty-first day of December. Such accounts shall be audited and published in the Official Gazettes of the Colony and of the Protectorate of Uganda: Provided that the first account to be so prepared shall be in respect of the period between the date of the establishment of the Board and the thirty-first day of December, 1941.

5A Added by Ord. 11/42, p. 53.

Compulsory
insurance
of goods.

6. (1) As and from the date upon which the scheme comes into operation, no person shall carry on any business as a seller or supplier of goods, which goods are for the time being owned by him in the course of such business and which are situated on land within, or upon the inland waters of, the Colony, the Protectorate of Uganda ~~or the Tanganyika Territory~~ and the value of which goods exceeds £200, or such other amount as the Board may, either in relation to goods generally or in relation to any specified classes of goods, prescribe, unless there is in force a policy of insurance in respect of all such goods for a sum not less than the value thereof for the time being, issued to him by the Board under the provisions of this Ordinance:

- in the proviso added by Ord. 32/42, p. 54
For the purposes of this sub-section where any goods are consigned on a vessel from any port in the Protectorate of Uganda to any other port in the Protectorate of Uganda and are, in the course of transit, carried outside the Protectorate of Uganda, the goods shall at all times during such transit be deemed to be situate in the Protectorate of Uganda provided they are not offloaded at any port outside the Protectorate of Uganda:

(2) Any person contravening the provisions of this section shall, on conviction, be liable to a fine not exceeding £500 and to a further fine not exceeding £100 for every day on which the contravention continues. Penalty.

(3) Any fine imposed under the provisions of this section shall, if recovered, be paid to the Fund.

6A Added by Ord. 11/42

7. Notwithstanding the provisions of section 6 of this Ordinance any person carrying on business as a seller or supplier of goods which are insurable under this Ordinance and the value of which in the course of that business is less than the sum prescribed under such section, may apply to the Board in the prescribed manner for a policy of insurance on such goods. Voluntary insurance of goods.

8. Goods shall not be insurable under this Ordinance if and so long as they are insured against war risks under a policy of marine insurance or a war risks policy issued under Part I of the War Risks Insurance Act, 1939. Goods not insurable.

2 & 3 Geo. 6,
Cap. 57.

9. (1) Subject to the provisions of this section, any goods shall be deemed for the purposes of this Ordinance to be owned— Ownership of goods.

(a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Ordinance, by that person;

(b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable as aforesaid and who is for the time being entitled either under a contract or by operation of law, either unconditionally or conditionally, to have the property in the goods vested in him:

Provided that where—

(i) any goods would, under the foregoing provisions of this sub-section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of business carried on by him in the Colony or the Protectorate of Uganda or who is entitled to have the property therein vested in him otherwise than in the course of such a business; and

- (ii) any person carrying on business in the Colony or the Protectorate of Uganda is for the time being entitled to sell or supply the goods as agents,

the goods shall be deemed to be owned by the last-mentioned person.

(2) A person carrying on business as a supplier of goods shall be deemed for the purpose of this Ordinance to have ceased to own any goods supplied by him for the purpose of or in pursuance of a contract made by him with any other person (in this sub-section referred to as "the party to be supplied") for work, labour and materials at whichever is the earliest of the following times, namely—

- (a) the time when, under the terms of the contract, he would have ceased to own the goods if this sub-section had not been in force;
- (b) the time when, in pursuance of the contract, the goods are fixed to or otherwise made part of goods belonging to the party to be supplied;
- (c) the time when, in pursuance of the contract, the goods are delivered at premises belonging to or in the occupation of the party to be supplied, and the goods shall, for the purposes of this sub-section, be deemed to have been fixed to or made part of goods belonging to the party to be supplied or to have been delivered at premises belonging to or in the occupation of the party to be supplied, where in pursuance of the contract the goods are fixed to or made part of goods belonging to, or, as the case may be, are delivered at premises belonging to or in the occupation of, such other person with whom the party to be supplied has made a contract for work, labour or materials or some further person with whom that other person has made such a contract, or some further person with whom that further person has made a contract, and so on.

Applications
for insurance.

10. (1) Applications for insurance under the provisions of this Ordinance shall be made to the Board in such manner as may be prescribed.

Board
to grant
applications.

(2) The Board shall, provided the application for insurance of insurable goods is made in proper form and the Board is satisfied as to the bona fides of the applicant and that the

1940

War Risks Insurance

No. XLI

value of the goods in respect of which the application is made is correctly stated, be bound to issue a policy of insurance in respect of such application, whether such application is compulsory under the provisions of this Ordinance, or voluntary.

(3) Notwithstanding the provisions of any law for the time being in force in the Colony, no stamp duty shall be payable on any policy or other document issued by the Board.

Stamp duty
not payable.

11. (1) Any person authorized in that behalf by the Board may at all reasonable times enter and inspect any premises occupied by any person carrying on business as a seller or supplier of goods, and may request any person found therein who is for the time being in charge thereof or in control of the business carried on therein, to produce to him and allow him to examine such accounts, or other documents and to furnish to him such information as he may reasonably require for the purpose of ascertaining whether or not, and if so to what extent, the person carrying on the business is insured under this Ordinance, and of ascertaining the value of any goods so insurable which are or were, at any relevant time, owned by him in the course of that business.

Power to
inspect
premises and
to call for
information.

(2) If any person wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with a request made thereunder, he shall, in respect of each such occasion on which such obstruction or failure takes place, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty pounds.

(3) If any person, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, he shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

(4) Where in any proceedings in respect of a contravention of section 6 of this Ordinance in relation to any business it is proved in relation to that business—

Burden
of proof.

(a) that a request for the production of a policy of insurance issued in accordance with the scheme insuring the person carrying on the business was made under this section and was not complied with; and

(b) that the person making the request was not satisfied that there was such a policy in force, it shall be presumed, except in so far as the contrary is proved, that the provisions of this Ordinance were being contravened in relation to that business at the time when the request was made and continued to be contravened in relation to that business at all times thereafter.

Legal proceedings.

12. Proceedings for an offence under this Ordinance shall only be instituted by or with ^{the consent} ~~the consent~~ of the Board.

Refunds and remissions.

13. The Board may, in any case where it appears to the Board just and equitable so to do, refund the whole or any part of any sum paid to it by any person by way of premium or may remit payment of any part of any sum so payable by any person.

Rule-making powers.

14. (1) The Board may, with the joint approval of the Governor of the Colony and the Governor of the Protectorate of Uganda, make Rules—

(a) prescribing anything required by this Ordinance to be prescribed;

(b) adding to, deleting from, or varying the Schedule to this Ordinance; and

(c) providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Ordinance, or that may be necessary or expedient for carrying out the objects of this Ordinance, and, where there may be in this Ordinance no provision or no sufficient provision in respect of any matter or thing necessary or expedient for giving full effect to this Ordinance, providing for or supplying such omission or insufficiency.

(2) The Board may, in any such Rules, describe goods by reference to any circumstances whatsoever.

Duration of Ordinance.

15. This Ordinance shall continue in force until such date as the Governor may, by Proclamation, determine, and upon such determination the Governor may, with the concurrence of the Governor of the Protectorate of Uganda, give directions for the winding up of the Fund ~~and, with the prior approval of the Secretary of State, for the disposal of any money standing to the credit of the Fund.~~

Replaced by
Ord. 11/42
p. 54.

SCHEDULE

1. Live stock.
2. Timber floating, and timber on the site where felled.
3. ~~Coal including anthracite and cannel coal, coke, coal tar pitch and manufactured fuel of which coal or coke is the chief constituent.~~
4. Non-metalliferous mine and quarry products, unmanufactured, other than mica.
5. Bricks and tiles of brick-earth and clay and refractory bricks, blocks and tiles, other than glazed bricks and tiles.
6. Synthetic magnesite.
7. Cement and cement clinker.
8. Lime.
9. Slates for roofing, slates for damp courses and slate slabs.
10. Concrete products of all descriptions.
11. The following manufactures of stone:—Pavement kerbs and setts; channels, slabs and flags; and manufactured stone for building purposes.
12. Iron ore and iron pyrites.
13. Manganese ore of all descriptions, except manganese ores for use in the manufacture of chemicals, electric batteries, manganese metal, glass or ceramics.
14. Ores, concentrates, drosses and residues for smelting of aluminium, antimony, copper, lead, nickel and zinc (or spelter), and drosses and residues of tin.
15. Ores, concentrates, mattes, drosses and residues of silver, platinum, palladium, iridium, rhodium, osmium and ruthenium.
16. Iron and steel scrap.
17. Cinder, scale and slag.
18. Scrap of the following metals and alloys thereof:—Aluminium, antimony, copper, lead, nickel, tin and zinc (or spelter).
19. Iron and steel of the following descriptions:—
 - (a) Pig iron;
 - (b) Ferro-alloys, other than in powder form;
 - (c) Ingots, billets, blooms and slabs; tin plate bars and sheet bars;
 - (d) Plates coated or uncoated, whether fabricated or not;
 - (e) Sheets, coated or uncoated;
 - (f) Angles, channels, tees, joists, piling sections and other sectional material, whether fabricated or not;
 - (g) Rounds, rods, wire rods, squares, hexagons, flats and all other sections and shapes;
 - (h) Bolts of $\frac{1}{2}$ in. in diameter and over, unmachined; rivets of $\frac{1}{2}$ in. in diameter and over unmachined;
 - (i) Rails, sleepers, fishplates and sole plates;
 - (j) Tinplates, terne plates, black plates and silver finished plates;
 - (k) Hoop and strip, hot or cold rolled;
 - (l) Tyres, axles and wheels;
 - (m) Goods of the following descriptions (not including bolts, rivets, nuts, washers, screws or spikes):—Iron castings (except where wholly or partly machined); steel castings; forgings; stampings (except where wholly or partly machined); pressings;
 - (n) Colliery arches and pit props;
 - (o) Hot finished wrought iron and steel tubes and standard fittings therefor, however made; cast iron pipes and standard fittings therefor; malleable cast fittings for pipes and tubes;
 - (p) Assemblies of plates and sectional materials as component parts of structures.
20. Copper, unwrought, whether refined or not, in ingots, bars, billets, wire-bars, blocks, slabs, cakes, cathodes, anodes, and rods, and copper shot.

S.N. 247/41

S.N. 45/41

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21. Aluminium, antimony, tin and zinc (or spelter), unwrought, in ingots, pigs, blocks, cakes, bars and slabs; lead and nickel, unwrought, in all forms.
22. Alloys of aluminium, antimony, copper, lead, nickel, tin, zinc (or spelter), unwrought, in ingots, pigs, blocks, cakes, bars and slabs.
23. Lead in white lead stacks and chambers.
24. Silver, platinum, palladium, iridium, rhodium, osmium, and ruthenium and alloys thereof, in grain, ingot, bar, sheet, tube, wire or powder and ply metal in the form of sheet, tube or wire, of which any of the said metals or any alloy thereof is a component.
25. Articles and findings made solely (except for fittings and embellishments, if any), of gold, platinum, palladium, iridium, rhodium, osmium or ruthenium.
26. Silver at the following stages of manufacture: Settings, stampings, draftings, spinings, castings and pressings.
27. Unmounted diamonds, whether rough or polished and industrial diamonds, mounted or unmounted.
28. Natural pearls, mounted or unmounted.
29. Other precious and semi-precious stones, unmounted, cut or uncut.
30. Gem set jewellery, that is to say, precious and semi-precious stones mounted in gold, platinum, palladium, iridium, rhodium, osmium or ruthenium.
31. Jewelled watch cases.
32. Printing machinery of the following descriptions, and component parts thereof:—Typesetting; letterpress (including rotary and flat bed); lithographic; photogravure; stereotyping.
33. The following compounds of radium of a concentration exceeding ten per cent:—Bromide, carbonate, chloride and sulphate.
34. Spent oxide of iron.
35. Recovered sewage grease; sewage sludge; and manure manufactured or derived from sewage.
36. Paintings in oil or water colours; pencil, ink and charcoal drawings and pastels on canvas or paper (including board); hand printed impressions taken from blocks, plates or like material, whether framed or unframed; reproductions by the colour-collotype process; sculpture, whether in the round, in relief or in intaglio.
37. Printed books, being not less than 50 years old, and manuscripts.
38. Objects of art or craftsmanship being not less than one hundred years old.
39. Postage stamps (intended for collection purposes) denoting a postal service or services, being marks or devices embossed or impressed or comprised in a label.
40. Goods forming the subject of a hire purchase agreement or agreements where the bailee is a person not carrying on the business of selling, letting or hiring goods of the description so hired and wherein provision is made for payment in not less than four instalments spread over a period of not less than six months.
41. Electric current.
42. Coco-nuts and coco-nut products before they have been received in a godown.
43. Coffee grown ^{in estates} in the Protectorate of Uganda before it has been received at a curing works.
44. Coffee grown ^{in estates} in the Colony before ^{it has been received at a curing works} transport to a curing works from the ^{estate on which it is grown.} ~~estate on which it is grown.~~
45. Gold before it is ^{sent to} ~~transported to a Bank from~~ a mine at which it is produced.
46. Hides and skins before purchase ~~for export~~ by an authorized buyer.
47. ~~Raw~~ Cotton before it has been purchased from the grower at a buying post, ginnery or other authorized place.
48. Sisal before decortication.
49. Any product of animal husbandry or of agriculture, horticulture or silviculture, not specially enumerated in this Schedule, before it has been baled, bagged or packed in any other manner whatsoever, for marketing.

50 Added by S.N. 72/41, p. 31.

ORDINANCE No. XLII of 1940

*Amended by
Ord. 16/41.*

Assented to in His Majesty's name this seventh day of December, 1940.

HENRY MOORE,
Governor.

[7TH DECEMBER, 1940] Date of assent.

An Ordinance to Provide for the Raising in the Colony of a War Loan

7th December, 1940

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 War Loan Ordinance, 1940. Short title.

2. Notwithstanding the provisions of the General Loan and Inscribed Stock Ordinance, the Governor is hereby empowered to raise in the Colony, by the issue, and sale whether within or without the Colony, of registered bonds (hereinafter referred to as "bonds"), loans of such sums of money as the Legislative Council may from time to time authorize by Resolution. Governor may issue and sell bonds. Cap. 46.

3. Any moneys raised by the sale of bonds under the provisions of this Ordinance shall be utilized for the prosecution of the war; and the Governor is hereby authorized to lend any moneys so raised to His Majesty's Government in the United Kingdom at such rates of interest, not exceeding the prescribed rate, as he may determine. Purposes for which money may be used.

4. The principal moneys represented by the bonds and any interest thereon are hereby charged upon and shall be payable out of the revenues and assets of the Colony. Bonds secured on Colony's assets.

5. Notwithstanding the provisions of the Stamp Ordinance, no stamp duty shall be payable on any transfer of bonds. Stamp duty. Cap. 57.

6. The Governor may make Regulations prescribing—
(a) the classes and title of bonds to be issued under the provisions of this Ordinance; Power to make Regulations.

- (b) the rate of interest which shall be payable on any bonds, and the dates on which, and the method by which, such interest shall be paid;
 - (c) the date on which and the manner in which such bonds shall be redeemed, and may, for that purpose, prescribe different dates for, and different methods of, redemption;
 - (d) the manner in which, the persons to whom and the places at which, applications for bonds may be made;
 - (e) the persons who may be registered holders of bonds;
 - (f) the manner in which, and the conditions subject to which, bonds shall be registered, and the person or persons by whom such register shall be kept;
 - (g) the manner in which, and the conditions subject to which, bonds may be transferred from a registered holder to any other person;
 - (h) the maximum amount of bonds which may be registered in the name of any holder and may, for that purpose, prescribe different maxima for different classes of bonds; and
- cc, added by Ord. 16/41*
(i) generally for the better carrying out of the provisions of this Ordinance.



COLONY AND PROTECTORATE OF KENYA

OFFICIAL GAZETTE SUPPLEMENT

Ordinances, 1940

NAIROBI, December 31, 1940

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No. XLIII of 1940

Assented to in His Majesty's name this thirty-first day of December, 1940.

HENRY MOORE,
Governor.

[31ST DECEMBER, 1940] Date of assent.

**An Ordinance to Amend the Native Liquor
Ordinance, 1930**

31st December, 1940

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 (Amendment) Ordinance, 1940, and shall be read as one with the Native Liquor Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 36 of 1930.

2. Sub-section (1) of section 9 of the Principal Ordinance is hereby amended by deleting therefrom the word "No" which occurs in the first line thereof and by substituting therefor the words "Save as provided in section 9A of this Ordinance, no".

Amendment of
section 9 (1) of
the Principal
Ordinance.

3. The Principal Ordinance is hereby amended by inserting therein, immediately after section 9 thereof, the following new section:—

Amendment of
the Principal
Ordinance.

"9A. (1) Notwithstanding anything in this Ordinance contained, the Governor in Council may, on the recommendation of the local authority concerned, authorize a licence to be granted to a person, other than a person of African extraction or of Arabian extraction born in Africa, to manufacture for the purpose of sale, and/or to sell native intoxicating liquor to natives resident or employed in such place or places as may be specified in such licence.

Licences to
person other
than persons of
African or
Arabian
extraction.

(2) A licence granted under sub-section (1) of this section shall, notwithstanding any other provision in this Ordinance contained, be issued free of charge, and shall, in addition to any other conditions which the Governor in Council may think fit to impose, be subject to the

condition that all profits accruing to the licensee from the manufacture for the purpose of sale and sale of native intoxicating liquor shall be paid to the local authority of the area concerned for expenditure in such ways and upon such projects on behalf of the natives resident or employed in the said area as may be approved by the Governor.

(3) Where any premises for the manufacture and/or sale of native intoxicating liquor have been established in any district under a licence granted in accordance with the provisions of this section, the District Commissioner of such district and any other officer who may be duly appointed for that purpose by the Governor shall at all reasonable times have the right to enter and inspect such premises for the purpose of—

- (a) ensuring that good order and proper standards of comfort and cleanliness are maintained;
- (b) ensuring that proper books of account are kept by the licensee in connexion with the manufacture for the purpose of sale or sale of native intoxicating liquor and for the purpose of examining the same; and
- (c) inquiring into any complaints against the proper conduct of the premises,

and the licensee shall afford all reasonable facilities and assistance to such District Commissioner or other officer whilst engaged in the foregoing duties.

(4) If the licensee commits a breach of any of the conditions of a licence granted under this section, or otherwise fails to comply with any of the provisions of this Ordinance, the District Commissioner may cancel his licence forthwith."

Amendment of
section 16 (1)
of the Principal
Ordinance.

4. Sub-section (1) of section 16 of the Principal Ordinance is hereby amended by inserting the words "other than the Teita District" immediately after the word "Province" which occurs in the third line thereof.

ORDINANCE No. XLIV of 1940

Assented to in His Majesty's name this thirty-first day of December, 1940.

HENRY MOORE,
Governor.

[31ST DECEMBER, 1940] Date of assent.

An Ordinance to Amend the Land and Agricultural Bank Ordinance, 1930

3rd March, 1931

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 and Agricultural Bank (Amendment No. 4) Ordinance, 1940, and shall be read as one with the Land and Agricultural Bank Ordinance, 1930, hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into force on the 3rd day of March, 1931.

Short title and commencement.

No. 3 of 1931.

2. Section 57 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 57 of the Principal Ordinance.

“57. (1) Every applicant for an advance under the provisions of this Ordinance shall pay to the Bank in advance—

Fees, costs, etc.

(a) fees in accordance with the scale set out in the Second Schedule to this Ordinance:

Provided that, where the application is in respect of a short-term advance, the fees to be paid shall be such fees as may from time to time be prescribed by the Governor in Council by notice in the Gazette;

(b) the valuator's fee and his travelling expenses, according to tariffs framed by the Board; and

(c) such other fee, not exceeding Sh. 42, in respect of preliminary clerical work as the Board may in each case determine.

In the event of an advance being refused, the applicant shall be entitled to a refund of fees paid by him, less—

- (a) an amount of Sh. 20;
- (b) the amount of the valuator's fee and travelling expenses; and
- (c) the fee charged by the Board in respect of preliminary clerical work.

In the event of a smaller amount being granted than is applied for, and such smaller amount being accepted by the applicant, the application fees shall be calculated on the amount granted.

(2) The costs and fees of preparing, completing or discharging any mortgage or other security shall be payable by the mortgagor to the Bank according to the scale set out in the Third Schedule to this Ordinance.

(3) The Governor in Council may from time to time on the recommendation of the Board, by notice in the Gazette, add to, delete from, or vary any item set out in the Second and Third Schedules hereto and may, in like manner, revoke or vary any of the fees prescribed by the Governor in Council under paragraph (a) of sub-section (1) of this section.

(4) The Board may charge to and recover from the mortgagor any expenses, including copying charges, actually incurred at any time during the continuance of a mortgage by the Board in connexion with such mortgage.

(5) The Board may, in its absolute discretion, in any particular case, or in any class of cases, waive the payment of any costs or fees payable under the provisions of this section."

*Amended by Ord No. 27/45-
42/45-
82/46
4/47*

ORDINANCE No. XLV of 1940

Assented to in His Majesty's name this thirty-first day of December, 1940.

HENRY MOORE,
Governor.

[31ST DECEMBER, 1940] Date of assent.

An Ordinance to Provide for the Payment of an Annual Personal Tax

1st January, 1941

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 Personal Tax Ordinance, 1940, and shall come into operation on the first day of January, 1941.

Short title and commencement.

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

Interpretation.

“approved” means approved by the Commissioner of Inland Revenue;

“collector” means the Commissioner of Inland Revenue, any District Officer, and such other officers as the Governor may, by notice in the Gazette, appoint either by name or by office;

“magistrate” means a magistrate holding a subordinate court of the First, Second or Third Class;

“temporary visit” means a visit to the Colony not exceeding six months in duration;

“total income” has the meaning assigned to it in the Income Tax Ordinance, 1940, whether the income is received in the Colony or not: *from added by Ord. No. 27/45*

No. 11 of 1940.

3. (1) Subject to the provisions of this Ordinance, there shall be paid in every year by every individual in the Colony a tax, to be known as a Personal Tax (hereinafter referred to as the “tax”) at the following rates:—

Amount of tax.

- (a) Where the individual's total income does not exceed £60 per annum: Sh. 15.
- (b) Where the individual's total income exceeds £60 but does not exceed £120 per annum: Sh. 30.
- (c) Where the individual's total income exceeds £120: Sh. 40.

Repealed & replaced by Ord. 4/47

(2) Notwithstanding the provisions of sub-section (1) of this sub-section, the tax payable under paragraphs (a), (b) and

(c) of that sub-section shall, during the continuance of the present war, including the year during which the war comes to an end, be Sh. 20, Sh. 40 and Sh. 60 respectively.

Assessment
of tax.

4. The tax shall be charged, levied and collected—

(a) In the case of an individual who is ordinarily resident in the Colony, upon the total income of such individual for the calendar year immediately preceding the year in respect of which the tax is due.

(b) In the case of an individual whose ordinary place of residence is not in the Colony and who becomes liable to tax in respect of any year, under the provisions of this Ordinance, upon the total income which may reasonably be expected to accrue to such individual during that year.

(c) In the case of an individual who arrives for the first time in the Colony with the intention of establishing his residence in the Colony, for the first and second years of such residence, upon the total income which may reasonably be expected to accrue to such individual respectively during such years.

Tax when
payable.

5. The tax shall become due on the first day of January in each year and shall be payable on or before the thirtieth day of April of that year:

Provided that, any individual, who is not in the Colony on the first day of January and who enters the Colony after the thirty-first day of March and is liable to pay tax under the provisions of this Ordinance, shall pay the tax in respect of the year during which he enters the Colony within thirty days after the date of his entry into the Colony:

And provided further that, any individual, who is liable to pay tax for any year under the provisions of this Ordinance and who leaves the Colony during that year, shall pay the tax in respect of that year before leaving the Colony.

Penalty.

6. Any individual who fails to pay the whole of the tax due from him by the dates prescribed in section 5 of this Ordinance shall be liable to pay, in addition, a penalty equal to one half of the amount of the tax in respect of which he is in default and such penalty shall be deemed to be part of the tax and shall be recoverable accordingly:

Provided that in no case shall the amount of the penalty exceed one half of the amount of tax payable by such individual under paragraphs (a), (b) or (c) of sub-section (1) of section 3 of this Ordinance, as the case may be.

7. (1) Every individual who is liable to the tax under this Ordinance shall tender to a collector the amount of tax for which he is liable and the collector shall accept the amount so tendered and shall issue to such individual a receipt in the approved form:

Tax to be paid to a collector.

Provided that the collector may, at the time of payment or at any time within three years after that date demand from the individual who paid the tax any additional tax which, in the opinion of the collector, was the proper amount which should have been paid together with any penalty to which the individual may be liable under section 6 of this Ordinance.

(2) Where an individual has not tendered the tax a collector may, if he considers that the individual is liable to pay the tax, demand payment from such individual of the amount of tax which, in the opinion of the collector, such individual is liable to pay, together with any penalty to which such individual may be liable under section 6 of this Ordinance.

(3) If any individual is aggrieved with the demand of a collector under the provisions of this section he may, within thirty days after the date of such demand, give notice in writing to such collector stating his objections; and if any such individual fails to reach agreement with such collector as to the amount of tax for which he is liable such individual may, within such time, and in such manner, as the Chief Justice may, and is hereby empowered to, prescribe, appeal to any magistrate having jurisdiction in the district or place in which such individual is for the time being staying or residing.

Replaced by Ord No 27/45

(4) added by Ord No 27/45

8. Every individual paying the tax shall furnish the collector with such information as may be required by him in preparing a receipt, and shall, if required by such collector, attend personally at the office of the collector for such purpose.

Tax payer to provide certain information.

9. The tax and any penalty shall be deemed to be a debt due to the Government of the Colony and may be sued for and recovered by any collector with full costs of suit from the individual charged.

Tax recoverable as a debt.

10. If any individual makes default in the payment of any tax or penalty due by him any magistrate, having jurisdiction in the district or place in which the individual in default is for the time being staying or residing, may issue a summons directing the individual to attend before him, at a

Power of magistrate.

Replaced by Ord No 27/45

time to be named in the summons, to show cause why he should not be ordered to pay the amount due as judgment debt.

Power to order payment into court of unpaid tax, etc.

11. Where a summons for enabling an individual to show cause as mentioned in the last preceding section has been issued, the magistrate may, on the date named in the summons or on any other date to which the hearing may be adjourned, order him to pay into court, within seven days or within such extended time as may be determined by the magistrate, the amount of the unpaid tax and penalty, and costs, either in one sum or in instalments.

Penalty.

12. (1) If the individual summoned as aforesaid fails without lawful excuse to comply with the summons or if he makes default in payment into court in the manner aforesaid the magistrate may commit such individual to prison, without hard labour, for a term not exceeding six weeks or until payment of the sum ordered to be paid, if paid before the expiration of such term:

Provided that no such committal shall be ordered for default in payment as aforesaid unless it be proved to the satisfaction of the magistrate that the individual either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(2) Proof of the means of any such individual may be given in such manner as the magistrate thinks fit. For the purpose of such proof, such individual and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has jurisdiction in civil matters, and such debtor and witnesses may be examined on oath.

Order of committal.

(3) Every order of committal under this section shall be issued, obeyed and executed in like manner to commitments by a court in the exercise of its jurisdiction in civil cases.

Imprisonment not to extinguish liability.

(4) Imprisonment under this section shall not operate as a satisfaction or extinguishment of the judgment debt.

Attachments and sale of movable property.

(5) The amount of any tax or penalty due and unpaid, and the sum (if any) ordered to be paid for costs, may at any time be levied by the attachment of the property of the individual in like manner as if the same were payable under a

decree of a civil court, and a magistrate is hereby empowered to issue such order either on his motion or on the application of any collector.

13. In the event of the individual paying the whole amount ordered to be paid as aforesaid and the costs of or in connexion with any attachment ordered, the magistrate, if a collector, shall issue to the individual a receipt in the approved form for the amount of the tax paid, or if not a collector, shall remit to a collector the amount so paid after deducting therefrom such part thereof as may represent costs, and the collector on receipt of such sum shall issue to the individual who has paid such sum a receipt in the approved form.

Magistrate may issue receipt.

14. In any proceedings instituted by any collector for the recovery of tax under the provisions of this Ordinance the amount of tax or penalty certified by a collector as being due and payable by the individual shall be prima facie evidence of such fact.

Burden of proof.

15. (1) A collector may, at any time, require any individual to produce the receipt issued to such individual for the payment of tax last payable, and a collector may retain any receipt so produced for such time as he may consider necessary for the purpose of identifying the individual named therein with the individual producing the same.

Power to demand production of receipt.

(2) A collector may require any individual, who refuses or neglects to produce his receipt when requested, to furnish him with information as to the office at which he has paid his tax last payable, and with such further information as the collector may require for the purpose of ascertaining whether such individual has paid such tax.

(3) For the purposes of this section "tax last payable" shall, during the year 1941, mean the tax payable under the Non-Native Poll Tax Ordinance, 1936, for the year 1940.

No. 50 of 1936.

16. There shall be exempted from the payment of the tax—

Exemptions.

- (a) every individual who has not attained the age of 18 years;
- (b) every woman whose personal income does not exceed £120 per annum;
- (c) every married woman living with her husband;
- (d) every individual liable to pay tax under the Native Hut and Poll Tax Ordinance, 1934, or under the Northern Frontier Province Poll Tax Ordinance, 1930;

No. 40 of 1934.

No. 53 of 1930.

(e) every individual on a temporary visit to the Colony, provided he is not the owner or lessee of land in the Colony, and is not engaged in any employment or business in the Colony, and has no pecuniary interest in any business or enterprise conducted or carried on in the Colony;

(f) any person or class of persons exempted by the Governor under the provisions of section 17 of this

Power of
Governor to
remit or refund
tax.

(2) + (3) added by Ord No. 27/45 p. 52

17. The Governor may remit, either wholly or in part, the tax and/or penalty on the ground of poverty, or for any other good cause, and may also for like reason refund the tax or penalty or any part thereof.

Penalty.

18. Any person who—

(a) fails without reasonable cause to attend and give evidence when required by a collector, or to answer truthfully and fully a question put to him, or to produce any book, document or paper required of him; or

(b) without reasonable cause, neglects or refuses to produce his receipt when required to do so under section 15 of this Ordinance, or who produces a receipt issued to some other person; or

(c) knowingly and wilfully makes or delivers any false statement, whether verbally or in writing, in relation to any matter or thing affecting his own or any other person's liability to tax; or

(d) by any act, default, neglect, fraud, or contrivance whatsoever evades or attempts to evade assessment of tax or the payment of tax; or

(e) obstructs or hinders any collector or other officer acting in the discharge of his duty under this Ordinance,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months.

Repeal of
No. 50 of 1936.

19. The Non-Native Poll Tax Ordinance, 1936, is hereby repealed:

Saving.

Provided that, notwithstanding such repeal, any tax payable under such repealed Ordinance and which has not been paid at the commencement of this Ordinance, shall be recoverable under, and in accordance with, the provisions of such repealed Ordinance.

ORDINANCE No. XLVI of 1940

Assented to in His Majesty's name this thirty-first day of December, 1940.

HENRY MOORE,
Governor.

[31ST DECEMBER, 1940] Date of assent

An Ordinance to Provide for a Surcharge, during the Present War, on the Fees Payable for Trading Licences Issued under the Provisions of the Traders Licensing Ordinance, 1936

1st January, 1941

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 War Taxation (Trading Licences) Ordinance, 1940, and shall come into operation on the 1st day of January, 1941.

Short title and commencement.

2. The fees prescribed, under paragraph (a) of subsection (1) of section 6 of the Traders Licensing Ordinance, 1936, for trading licences issued under the provisions of that Ordinance are hereby increased by 50 per centum.

Surcharge of 50 per cent on Trading Licences. See ords 5/47
No. 51 of 1936.

3. This Ordinance shall continue in force until the 31st day of December next following such date as the Governor may, by Proclamation, declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end.

Duration of Ordinance.
- See Proc. 4/46/37
24/1/46

ORDINANCE No. XLVII of 1940

Assented to in His Majesty's name this thirty-first day of December, 1940.

HENRY MOORE,
Governor.

[31ST DECEMBER, 1940] Date of assent.

An Ordinance to Apply a Sum of Money for the Service of the Year Ending the 31st day of December, 1941

1st January, 1941

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 1941 Appropriation Ordinance, 1940. Short title
2. The Public Revenues for the year 1941 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 forty-one, with the sum of three million, eight hundred and twenty-six thousand, one hundred and forty pounds. Public Revenue and other funds 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 Accountant General of the Colony and Protectorate of Kenya is hereby authorized 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 annexed hereto, the said sum of three million, eight hundred and twenty-six thousand, one hundred and forty pounds which will come in course of payment during the year ending the 31st day of December, One thousand nine hundred and forty-one. Accountant General's authority for payment.

SCHEDULE

<i>No. of Head</i>	<i>Amount £</i>
1. His Excellency the Governor	14,552
2. Accountant General	16,024
3. Administration	197,016
3A. Administration Extraordinary	4,500
4. Agriculture	74,765
5. Audit	18,950
6. Civil Aviation	26,309
7. Coast Agency	5,489
8. Conference of East African Governors	3,464

No. XLVII

1941 Appropriation

1940

SCHEDULE—(Contd.)

<i>No. of Head</i>	<i>Amount £</i>
9. Customs, Kenya Expenditure	30,387
9A. Customs Extraordinary, Kenya	45
10. Education	204,666
11. Forest	28,005
12. Game	8,097
13. Government Chemist	2,117
14. Inland Revenue, Kenya	22,133
15. Judicial	31,811
16A. Kenya Auxiliary Air Unit	4,000
17. Labour	15,392
18. Lands and Settlement	32,810
19. Legal	9,357
20. Local Government: Contributions to Local Authorities	116,276
20A. Local Government: Contributions to Local Authorities Extra-ordinary	8,200
21. Medical	232,212
21A. Medical Extraordinary	13,125
22. Military	120,015
23. Mining and Geological	9,361
24. Miscellaneous Services	32,358
24A. Miscellaneous Services Extraordinary	2,270
25. Naval Expenditure, Kenya	4,285
26. Pensions and Gratuities	243,600
27. Police	148,870
27A. Police Extraordinary	2,242
28. Posts and Telegraphs	156,676
28A. Posts and Telegraphs Extraordinary, Kenya	36,055
29. Printing and Stationery	36,957
30. Prisons	60,285
31. Public Debt, Kenya	269,253
32. Public Works Department	80,990
33. Public Works Recurrent	124,973
34. Registrar General	5,362
35. Rent and Interest to H.H. the Sultan of Zanzibar	16,000
36. Secretariat and Legislative Council	29,574
37. Subventions	16,324
38. Trade and Information Office	533
39. Veterinary	63,737
39A. Veterinary Extraordinary	850
40. Public Works Extraordinary	27,150
41. Colonial Development Fund	16,035
42. War Expenditure, Civil	134,820
43. Conference of East African Governors	9,707
44. Customs	22,144
44A. Customs Extraordinary	30
45. Income Tax	11,040
46. Naval	86,715
47. Posts and Telegraphs	120,621
47A. Posts and Telegraphs Extraordinary	75
48. Public Debt	817,531
	<u>£3,826,140</u>



COLONY AND PROTECTORATE OF KENYA

LIST OF
KENYA ORDINANCES ASSENTED TO
as at 31st December, 1940

1941

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI
Price 50 cts.

LIST OF
KENYA ORDINANCES ASSENTED TO
as at 31st December, 1940

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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NOTE.—The Ordinances marked * have not yet been brought into operation.

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Amendments made by the Revised Edition of the Laws (Operation) Ordinance, 1926, and by the Interpretation (Definition of "Native") Ordinance 1934, to various Ordinances are not shown in this list.