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COLONY AND PROTECTORATE OF KENYA

ORDINANCES

ENACTED DURING THE YEAR

1934

VOL. XIII (NEW SERIES)

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TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION

FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1934

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1934
1877	Indian Limitation Act (Applied) ..	Repealed as applied to this Colony save in so far as it relates to prescription ..	21
1898 <i>Revised Edition</i> Cap. 1	Indian Post Office Act (Applied) ..	Repealed as applied to the Colony ..	18
"	Interpretation and General Clauses ..	Adds section 26 ..	9
18	Arbitration ..	Repeals definition of word "Native" ..	5
34	Widows' and Orphans' Pension ..	Amends section 9 (3) and adds section 14A ..	6
39	Reformatory Schools ..	Amends sections 4A (3) and 27 (1) and adds section regarding certain officers to be deemed to have exercised option ..	17
51	Native Hut and Poll Tax ..	Repealed ..	22
52	Non-Native Poll Tax ..	Repealed ..	40
57	Stamp ..	Repealed subject to revival on expiry of Ordinance No. 61 of 1934 ..	61
60	Cotton (Tax) ..	Repeals and replaces section 2 and repeals Schedule ..	59
62	Immigration Restriction ..	Repeals section 5 ..	52
63	Vagrancy ..	Repeals definition of word "Native" and amends sections 10 and 11 ..	14
71	Liquor ..	Repealed ..	55
94	Bank ..	Amends section 32 and repeals and replaces section 33 ..	62
117	Post Office Amendment ..	Repealed ..	28
127	Native Registration ..	Repeals definition of word "Native" and amends sections 3, 4, 5, 6, 8, 9, 10, 11, 13, 15, 22 and 23 ..	18
128	Native Exemption ..	Repealed ..	55
129	Native Authority ..	Repeals definition of word "Native" and amends sections 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, 24, 25, 26 and 27 ..	12
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TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—(Continued)
FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1934

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1934
<i>Revised Edition</i>			
Cap. 131	Natives Trust Fund	Repeals definition of word "Native" and amends sections 6 and 7	55
" 135	Native Foodstuffs	Repeals definition of word "Native" and amends sections 2 and 3	55
" 137	Natives' Arms	Repeals definition of word "Native" and amends sections 3 and 5	55
" 139	Employment of Natives	Repeals definition of word "Native" and amends sections 2, 16, 17, 18, 33, 38, 39, 63 (5), 66, 69, 72, 73, 74, 75 and 76	55
" 140	Crown Lands	Amends sections 24 (3), 42, 43 and 44	26
" 157	Diseases of Animals	Amends section 2	50
" 159	Branding of Stock	Repeals definition of word "Native" and amends sections 22 and 33	55
" 161	Game	Repeals definition of word "Native" and amends sections 2, 17 and 34	55
" 165	Electric Power	Amends sections 18, 19, 27 (2), 33, 90, 92, 94, 97, 98, 99, 107 and 125. Repeals and replaces sections 91, 93 and 105.	
10 of 1924	Trespass	Repeals section 96	37
5 of 1925	Resident Native Labourers	Repeals definition of word "Native" and amends section 6	55
12 of 1927	King's African Rifles Reserve of Officers	Repeals definition of word "Native" and amends sections 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16	55
17 of 1927	Ancient Monuments Preservation	Repeals and replaces section 11 (1)	57
20 of 1927	Asiatic Widows' and Orphans' Pension	Repealed	53
19 of 1928	Local Government (Municipalities)	Amends section 4 and adds section regarding officers in amalgamated post and telegraphic service	31
		Repeals definition of word "Native" and amends sections 50, 51, 52 and 69	55

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

FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1934

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1934
26 of 1928	Traffic	Adds sections regarding restriction on pillion riding and travelling on loaded motor vehicles and amends sections 12A, 28B, 29 and 31 and Schedule	41
1 of 1930	Customs Tariff	Amends Schedule	42
8 of 1930	Sugar (Amendment).. .. .	Amends section 2	10
9 of 1930	Native Lands Trust.. .. .	Adds sections 5A, 15A, and 25 to 40. Repeals section 15 (1) (g)	36
10 of 1930	Penal Code	Amends sections 5, 25, 27, 29, 31, 35, 38, 88, 103, 108, 115A, 121, 147, 166, 167, 181, 229, 247, 285, 294, 295, 296, 305, 314, 317, 329 and 346. Adds sections 35A, 94A, 96A, 97A, 120A, 223A, 240A, 284A and 296A. Repeals and replaces sections 127 (3), 163, 165, 297 and 343.. .. .	23 5
11 of 1930	Criminal Procedure Code	Amends sections 11, 288 and 289 Amends sections 2, 11 (1), 27, 34, 66, 69, 81, 83, 89 (2), 91, 116, 132, 141, 145, 149 (1), 150, 151, 152, 153, 154, 179, 187, 190, 206, 264, 271, 277, 285, 305, 326, 335, 338, 349, 354, 372, First and Second Schedules. Adds sections 41A, 132A, 169A and 287A. Repeals and replaces sections 74, 117, 129, 172, 209, 274, 275 and 317 Repeals definition of word "Native" and amends sections 2, 9, 10, 11, 124 and 248.. .. .	24 55
12 of 1930	Agricultural Advances	Adds five sections regarding interpretation, transfer of powers, Central Board may waive priority, agents may re-issue proceeds of crops, etc., and agents may be party to arrangement with merchant firm	34

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—(Continued)
FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1934

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1934
24 of 1930	Chattels Transfer	Amends section 2. Repeals section 3 (2). Revives paragraph (j) of definition of "Instrument" in section 2	3
32 of 1930	Bankruptcy	Amends section 89 (3)	49
37 of 1930	Prisons	Repeals definition of word "Native" and amends sections 28 and 61	55
39 of 1930	Native Tribunals	Repeals and replaces section 44	51
52 of 1930	Liquor (Amendment)	Repeals definition of word "Native"	55
53 of 1930	Northern Frontier Province Poll Tax	Repealed	62
63 of 1930	Townships	Amends sections 2, 4, 7, 20, 24, 25, 26, 37 (1), 40, 41, 43, 48, 52, 53, 55, 56, 57, 64, 69 and 70. Repeals and replaces sections 3, 16, 19, 21 and 42. Repeals sections 45 and 63. Adds section regarding investigations and searches by police officers, alters designations of certain officers, amends designations used in Ordinances and provides for the consolidation of the Principal Ordinance with the amending Ordinance	15
64 of 1930	Police	Repeals and replaces sections 3, 16, 19, 21 and 42. Repeals sections 45 and 63. Adds section regarding investigations and searches by police officers, alters designations of certain officers, amends designations used in Ordinances and provides for the consolidation of the Principal Ordinance with the amending Ordinance	55
3 of 1931	Land and Agricultural Bank	Adds sections regarding advances	44
16 of 1931	Courts	Repeals definition of word "Native" and amends sections 3, 6, 18 and 19 and the Schedule	4
38 of 1931	Liquor (Amendment)	Repealed	55
36 of 1932	Chattels Transfer (Amendment)	Repealed	62
39 of 1932	Ancient Monuments Preservation (Amend.)	Repealed	3
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TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—(Continued)
 FORMER ORDINANCES (in Chronological Order) REPEALED OR AMENDED BY ORDINANCES OF 1934

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1934
48 of 1932	King's African Rifles	Amends sections 2, 6, 7, 46, 48 (2), 52 and 60 (3). Repeals and replaces sections 9, 10, 13, 14 and 51 (2)	29
50 of 1932	Coffee Industry	Repealed	56
53 of 1932	Non-European Officers' Pensions	Adds sub-section 17 (2)	54
4 of 1933	Land and Agricultural Bank (Amendment)	Amends section 2	47
15 of 1933	Juvenile Offenders	Repealed	33
28 of 1933	Companies	Amends sections 79 and 146	22
34 of 1933	Coffee Industry (Amendment)	Repealed	20
38 of 1933	Tax on Imported Packages	Adds section giving authority to enter into agreement with Tanganyika for allocation of tax	54
40 of 1933	Non-Native Poll Tax	Amends sections 2, 15, 30 (d) and 31. Repeals and replaces sections 4, 10, 11, 16, 18 and 19. Repeals sections 5 (c) and 9	7
41 of 1933	Licensing	Repeals definition of word "Native"	1
57 of 1933	Registration of Designs	Repealed	55
61 of 1933	Mining	Amends sections 5 and 13. Amends sections 2, 13 (1), 31, 36, 45, 76, 80 and 84. Repeals and replaces sections 14 (3), 19, 85, 86 and 91	63
18 of 1934	Post Office	Amends sections 10, 14, 20 and 24	39
27 of 1934	European Civil Service Provident Fund	Amends sections 2, 6 (b), 7. Repeals and replaces sections 4 (1), 4 (2), 5 and 10	43
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Colony and Protectorate of Kenya

ORDINANCE No. I of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

[17TH MARCH, 1934.] Date of assent.

An Ordinance to Amend the Non-Native Poll Tax Ordinance, 1933.

17th March, 1934

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 Non-Native Poll Tax (Amendment) Ordinance, 1934, and shall be read as one with the Non-Native Poll Tax Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

Short title.
No. 40 of 1933.

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

Amendment of section 2 of the Principal Ordinance.

- (a) by the deletion of the definition of "due date";
- (b) by the addition of the following definition:—

'final date' means the last day upon which the tax can be paid without a penalty falling to be added thereto and, subject to the provisions of section 10, shall be the 30th day of June, 1934;

- (c) by repealing sub-section (3) and substituting therefor the following:—

"(3) Subject to the provisions of section 5 of this Ordinance an individual shall be deemed to be a taxpayer for the purposes of this Ordinance for the year 1934 if—

- (a) he is in the Colony for a period or periods amounting in all to six months or more during the year 1934;

- (b) he was during the year 1933 in the Colony for a period or periods amounting in all to six months or more and also in the Colony for any period during the year 1934 and leaves the Colony during the year 1934, and subsequently returns to the Colony; or
- (c) he comes to the Colony during the year 1934 intending to stay in the Colony for a period of six months or more."

Repeal and replacement of section 4 of the Principal Ordinance.
Levy of poll tax.

3. Section 4 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

"4. (1) There shall be charged, levied and collected in manner hereinafter mentioned a non-native poll tax (in this Ordinance referred to as "the tax") for the year 1934, assessed on every non-native male or female taxpayer at the rate applicable to his or her taxable income accruing in, derived from or received in the Colony in respect of—

- (a) gains or profits from any trade, adventure in the nature of trade, business, profession, vocation or employment;
- (b) dividends, interests or discounts;
- (c) any pension, allowance, charge or annuity;
- (d) rents, royalties, premiums and any other profit arising from property.

(2) For the purposes of sub-section (1) of this section the words "taxable income accruing in the Colony" shall be deemed to include taxable income received by a taxpayer for services rendered or work performed in the Colony, whether such income is received in the Colony or not."

Repeal of section 5 (c) of the Principal Ordinance.

4. Paragraph (c) of section 5 of the Principal Ordinance is hereby repealed.

Repeal of section 9 of the Principal Ordinance.

5. Section 9 of the Principal Ordinance is hereby repealed.

1934

Non-Native Poll Tax

No. 1

6. Section 10 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 10 of the Principal Ordinance.

“10. (1) Any taxpayer who—

Tax of persons coming to or returning to Colony and of persons attaining the age of 18.

(a) comes to the Colony after the thirty-first day of March, 1934; or

(b) attains the age of eighteen years on or after the thirty-first day of March, 1934,

and has not already made a return under section 11 of this Ordinance and paid tax in accordance therewith in respect of the year 1934 shall make a return of his taxable income and pay the tax for the year 1934 in accordance with such return within ninety days of his so coming to or returning to the Colony or of his so attaining the age of eighteen.

(2) Any taxpayer who leaves the Colony between the thirty-first day of December, 1933, and the first day of April, 1934, and who subsequently returns to the Colony and who, prior to his departure, had not made a return under section 11 and paid the tax in accordance therewith for the year 1934 shall make a return of his taxable income and pay the tax for the year 1934 in accordance with such return within ninety days after the date of his return to the Colony: Provided that if such taxpayer had so left the Colony before the date of the enactment of the first amendment to this Ordinance the words “section 10” shall be read for the words “section 11” in this sub-section.

(3) Any taxpayer who leaves the Colony after the thirty-first day of March, 1934, and before the thirtieth day of June, 1934, and who subsequently returns to the Colony and who, prior to his departure, had not already made a return under section 11 of this Ordinance and paid the tax in accordance therewith shall make a return of his taxable income and pay the tax for the year 1934 in accordance with such return within the same number of days after the date of his return to the Colony as the number of days which elapsed between the date of his departure from the Colony and the thirtieth day of June, 1934.”

Repeal and replacement of section 11 of the Principal Ordinance.

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

Submission of return of income.

"11. On or before the final date every taxpayer shall submit to the collector a return of income in the form set out in the First Schedule hereto, and shall at the same time pay to a collector the tax due in accordance with such return."

Amendment of section 15 of the Principal Ordinance.

8. Section 15 of the Principal Ordinance is hereby amended by the substitution of the words "final date" for the words "due date" which occur in the third line thereof.

Repeal and replacement of section 16 of the Principal Ordinance.

9. Section 16 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Power to call for returns, books, etc.

"16. For the purpose of obtaining full information in respect of an individual's income a collector may give notice to such individual requiring him within the time limited by such notice, which time shall not be less than twenty-one days from the date of such notice, to complete and deliver to the collector a prescribed return and/or to attend personally before him and to produce for examination any books, documents, accounts and returns which the collector may deem necessary."

Repeal and replacement of section 18 of the Principal Ordinance.

10. Section 18 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Penalty added when return not made or tax not paid.

"18. There shall be added to the tax due in respect of each year a penalty equal to twenty per centum of the amount of such tax in the following cases—

(i) if a return of taxable income is not made and tax in accordance therewith is not paid by the final date;

(ii) if tax or additional tax is declared to be due from a taxpayer upon an assessment under sections 14 and 15 or 17 hereof.

The penalties referred to in this section shall be deemed to be part of the tax due and shall be recoverable accordingly."

1934

Non-Native Poll Tax

No. I

11. Section 19 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 19 of the Principal Ordinance.

“19. The Governor may remit the whole or any part of any penalty under section 18 for any reason which to him may seem fit.”

Power to remit penalty.

12. Paragraph (d) of section 30 of the Principal Ordinance is hereby amended by the substitution of the words “final date” for the words “due date” which occur in the last line thereof.

Amendment of section 30 (d) of the Principal Ordinance.

13. Section 31 of the Principal Ordinance is hereby amended by the insertion of the words “for the year 1933” after the word “him” which occurs in the fourth line thereof.

Amendment of section 31 of the Principal Ordinance.

14. Nothing in this Ordinance contained shall be deemed to affect any obligation or liability acquired or incurred during the year 1933 under any of the provisions of the Principal Ordinance repealed or amended by this Ordinance.

Saving in respect of liability for 1933.

ORDINANCE No. II of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

An Ordinance to Provide for the Transfer of the Collection of Revenue.

Date of commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Transfer of Revenue Collection Ordinance, 1934.

Collection of certain revenue by Treasurer.

2. Where under any of the Ordinances or Rules set out in the first column of the Schedule hereto any money is required to be paid in respect of any tax, licence, certificate or permit set out in the second column of the said Schedule it shall be lawful for the Treasurer or any person deputed by him to receive such money and to issue any necessary receipt and any such licence, certificate or permit:

Provided that when the Treasurer has deputed a person or persons to receive in any district or area any such money and to issue any such receipt, licence, certificate or permit, any money required to be paid as aforesaid shall in such district or area be paid to the person or persons so deputed.

SCHEDULE

FIRST COLUMN	SECOND COLUMN
The Stock Traders Licence Ordinance (Chapter 59 of the Revised Edition)	The licence required under section 4.
The Stage Plays and Cinematograph Exhibitions Ordinance (Chapter 73 of the Revised Edition)	The licence required under section 3.
The Sales by Auction Ordinance (Chapter 103 of the Revised Edition)	The licence required under section 4.
The Drugs and Poisons Ordinance (Chapter 120 of the Revised Edition)	Licences issued in accordance with the provisions of the Poisonous Substances and Agricultural Purposes Rules.
The Employment of Natives Ordinance (Chapter 139 of the Revised Edition)	The permit to recruit labour required under section 33.

SCHEDULE—(Contd.)

FIRST COLUMN	SECOND COLUMN
The Game Ordinance (Chapter 161 of the Revised Edition)	All licences required under the Ordinance.
The Arms and Ammunition Ordinance, 1925 (No. 8 of 1925)	All licences required under the Ordinance.
The Methylated Spirits Ordinance, 1925 (No. 21 of 1925)	The licence required under section 3.
The Game Birds Protection Ordinance, 1926 (No. 8 of 1926)	All licences required under the Ordinance.
The European Education Tax Ordinance, 1926 (No. 33 of 1926)	The tax payable under section 3.
The Asiatic Education Tax Ordinance, 1926 (No. 34 of 1926)	The tax payable under section 3.
The Trout Protection Ordinance, 1928 (No. 24 of 1928)	The licence required under section 4.
The Traffic Ordinance, 1928 (No. 26 of 1928)	Fees for licences issued under section 4.
The Brokers Ordinance, 1930 (No. 56 of 1930)	The licence required under section 3.
The Money-lenders Ordinance, 1932 (No. 45 of 1932)	The licences required under section 5.
The Coffee Industry Ordinance, 1932 (No. 50 of 1932)	The licences required under sections 4 and 9.
The Shops in Rural Areas Ordinance, 1933 (No. 20 of 1933)	The licence required under section 3.

ORDINANCE No. III of 1934

Assented to in His Majesty's name this seventeenth day
of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

**An Ordinance to Amend the Chattels Transfer
Ordinance, 1930.**

Date of
commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Chattels
Transfer (Amendment) Ordinance, 1934, and shall be read
as one with the Chattels Transfer Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

No. 24 of 1930.

Amendment of
section 2 of
the Principal
Ordinance.

2. Section 2 of the Principal Ordinance is hereby
amended by deleting the second paragraph lettered (a) in the
definition of "instrument" (which paragraph immediately
succeeds the line reading " 'Instrument' does not include the
following :—") and substituting therefor the following para-
graph :—

“(a) Securities over, or leases of, fixtures (except 'trade
machinery' as hereinafter defined, when mortgaged
or charged apart from the land to which it is
attached) when mortgaged, charged or leased in any
mortgage, charge or lease of any freehold or lease-
hold interest in any land or building to which they
are affixed, and whether or not such fixtures are
specifically included in such mortgage, charge or
lease by mention thereof in separate words”

and by deleting the definition of "trade machinery" and
substituting therefor the following :—

“Trade machinery” means the machinery used in or
attached to any factory or workshop as hereinbefore de-
fined and machinery and plant used in connexion with
the production, preparation or manufacture of agricultural
products, but does not include—

- (a) the fixed motive powers, such as the waterwheels and steam and other engines and the steam boilers, donkey engines and other fixed appurtenances of the said motive powers;
- (b) the fixed power machinery (such as the shafts, wheels, drums and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or
- (c) the pipes for steam, gas and water

3. Sub-section (2) of section 2 of the Principal Ordinance is hereby repealed. Amendment of section 3 of the Principal Ordinance.

4. The Chattels Transfer (Amendment) Ordinance, 1932, is hereby repealed, and the provisions of the Principal Ordinance repealed by the said amending Ordinance are hereby revived, and shall be deemed to have been of full force and effect as from the date of commencement of the Principal Ordinance: Provided that nothing in this section contained shall be deemed to invalidate or render void any mortgage or charge granted or created by a company incorporated or registered under the Companies Ordinance or the Companies Ordinance, 1933, and registered as a chattels mortgage prior to the commencement of this Ordinance. Repeal of Ordinance No. 36 of 1932 and revival of provisions repealed by that Ordinance.
Cap. 93.
No. 28 of 1933.

ORDINANCE No. IV of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

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

Date of
commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Land and Agricultural Bank (Amendment) Ordinance, 1934, and shall be read as one with the Land and Agricultural Bank Ordinance, 1930, as amended by the Land and Agricultural Bank (Amendment) Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

No. 3 of 1931.

No. 4 of 1933.

Interpretation.

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

No. 24 of 1931

“co-operative society” means a co-operative society as defined in the Co-operative Societies (Registration) Ordinance, 1931, or any Ordinance amending or replacing the same;

“farmer” includes—

- (a) the duly authorized attorney of such farmer;
- (b) an executor or administrator of a deceased farmer if authorized by will or by an order of the court or otherwise by law to mortgage lands;
- (c) a trustee appointed by deed or will if authorized by such deed or will or by an order of the court or otherwise by law to mortgage lands; and
- (d) for the purposes of temporary advances under sections 3 and 4 of this Ordinance an executor or administrator of a deceased farmer, a trustee appointed by deed or will, and a receiver appointed by an order of the court or by a mortgage, even though such persons may not have been specifically authorized to mortgage lands.

8. (1) Notwithstanding anything contained in the Principal Ordinance it shall be lawful for the Board out of the funds of the bank to make temporary advances to farmers for such purposes as may be prescribed by the Governor in Council and on such conditions as the Board may see fit in any case to impose: provided, however, that no advance of a sum exceeding five hundred pounds shall be made and every such advance shall bear interest at such rate per annum as may from time to time be fixed by the Board with the consent of the Governor in Council. Notification of the decision of the Board to make any such advance shall be published in the Gazette.

Temporary
advances.

(2) No advance shall be made under this section of a sum which together with advances (if any) made to the same farmer under paragraphs (a) and (b) of section 18 of the Principal Ordinance exceeds the maximum advance which can be made under sections 27 (3), 28 (2) and 28 (3) of the Principal Ordinance.

(3) Every such advance made under this section with interest thereon shall become due and payable on the thirtieth day of June next following the date of the advance: provided, however, that the Board may, at its discretion, from time to time postpone the date of repayment for a total period not exceeding three years.

(4) All moneys advanced under the provisions of this section, and all interest thereon and charges incidental thereto, shall be a charge on the lands in respect of which the advance is made and upon the crops and produce grown or to be grown thereon, when reaped or gathered therefrom, and on the product or article to be cured, made or manufactured from such crops and produce; and such crops and produce upon severance from the land and the product or article to be cured, made or manufactured therefrom shall not be deemed to be chattels within the meaning of the Chattels Transfer Ordinance, 1930; and the charge hereby created shall have priority both in law and in equity to all encumbrances whatsoever, save and except debts due to His Majesty, as from the date on which notice of the decision to make such advance is published in the Gazette:

No. 24 of 1930.

(5) No payment in respect of an advance shall be made under this section until the aforesaid notification of the Board's decision to make an advance has been published in the Gazette and the provisions of section 4 have been complied with:

Provided, however, that before any advance is made under the provisions of this section the farmer shall first obtain the consent in writing of the several encumbrancers (if any) of the lands in respect of which the advance is applied for to such advance being made; and no charge created under the provisions of this section shall have priority to an encumbrance where the farmer has omitted to obtain the consent in writing of the encumbrancer.

Cap. 142. Provided further that notwithstanding anything in the Registration of Titles Ordinance or in any other Ordinance contained, or any provision of law or equity to the contrary, immediately upon the publication in the Gazette of the notification of the Board's decision to make an advance under this section, all persons dealing with the lands or any interest therein shall be deemed to have notice of such advance, and all such dealings shall be and be construed to be subject to the charge and priority created by this section.

**Notification to
Principal
Registrar of
Titles.**

Cap. 142. 4. As soon as possible after the publication in the Gazette of the notification required under section 3 the Board shall fill up a notification in a form to be approved by the Board and shall sign and forward the same to the Principal Registrar of Titles, who shall file the same in a register to be kept for the purpose, and such register shall be open to the public for inspection free of cost: Provided that where the advance to be allowed is in respect of lands held under the provisions of the Registration of Titles Ordinance the Principal Registrar of Titles shall also endorse a memorandum of the advance upon the Crown grant or certificate of title.

**Repayment of
advances.**

5. Upon the repayment by the farmer of any advance made under section 3 of this Ordinance together with interest at the rate prescribed to the date of such repayment, the Board shall give a receipt for the same; and the Principal Registrar of Titles shall, upon production to him of such receipt, write the word "Cancelled" across the notification filed in the register and across the memorandum (if any) endorsed on the Crown grant or certificate of title, and thereupon the charge created by this Ordinance in respect of the said advance shall be extinguished. Notice of the extinguishment of any advance shall be published in the Gazette as soon as possible after the date of such extinguishment.

1934

Land and Agricultural Bank

No. IV

6. (1) If any farmer shall make default in the payment of any sums due by him under section 3 of this Ordinance it shall be lawful for the Board to sell the lands in respect of which such advance was made.

Enforcement
of security.

(2) The provisions of section 45A of the Principal Ordinance as amended by the Land and Agricultural Bank (Amendment) Ordinance, 1933, shall apply to advances made under section 3 of this Ordinance as if they were advances made under Part II or Part III of the Principal Ordinance.

No. 4 of 1933.

7. The consent by a trustee to the postponement of his security to enable an advance under section 3 of this Ordinance to be made shall not itself be deemed improper or a breach of trust so as to render such trustee liable in respect of any loss or consequences resulting from such advance having been made, any rule of law or equity to the contrary notwithstanding.

Consent by
trustee to
temporary
advance.

8. (1) A co-operative society may, upon written application made in a form approved by the Board, obtain from the Bank on such conditions as the Board may determine an advance for the erection of buildings and equipment and the purchase of land for any one or more of the objects which that society is legally competent to pursue. Such application, when signed by the chairman and secretary of the society, or by any persons purporting to act in those capacities, shall bind the society and all members of such society at the time of the making of the application, jointly and severally, for the repayment of any advance made by the bank in pursuance of such application.

Advances to
co-operative
societies.

(2) Anything to the contrary notwithstanding in any law governing co-operative societies, any such society, subject to any other provisions contained in its rules, regulations or articles of association, may apply for such advance when authorized by a resolution passed by a majority of two-thirds of the members of the society present at a meeting duly convened.

(3) The advance shall be made upon the joint and several liability of the members of the society at the time of the making of the application referred to in sub-section (1) hereof, and upon such additional security as the Board may require and shall bear interest at such rate as the Governor in Council may determine, payable periodically in advance, upon such dates as the Board may direct. The advance

shall be repayable in half-yearly instalments, together with all interest due thereon, within ten years from the date thereof, unless the Board extend the period of repayment.

(4) Any bond to secure an advance under this section shall be in a form approved by the Board.

(5) Any co-operative society making an application as in sub-section (1) of this section shall at the same time lodge with the Registrar of Co-operative Societies a list of those persons who were members of the society at the time when the resolution was taken to make the said application.

(6) The Registrar of Co-operative Societies shall, at the request of the Board, furnish such lists and other information as the Board may require regarding any society registered by him.

Examination
of books of
society.

9. The Board shall at all times have full access to all accounts, documents, papers and books of any co-operative society to which an advance has been made by the bank or from which an application for an advance has been received, and may cause all such accounts, documents, papers or books to be examined by a member of the staff or by any person appointed thereto. The Board shall not make an advance to a co-operative society unless satisfied that all such accounts, documents, papers and books are in order.

Members of
society to
remain liable

10. Notwithstanding anything to the contrary contained in any law, every member of a co-operative society shall remain liable after his withdrawal from the society for every debt or obligation to the bank which was incurred by the society while he was a member thereof and was undischarged at the date of his said withdrawal until the Board is satisfied that the society and its remaining members are capable of discharging the debt or obligation and to this end such members on withdrawal from the society shall provide full and sufficient security to the satisfaction of the Board for the due fulfilment of the said obligations.

Where the Board is satisfied that the retiring member has provided full and sufficient security for the due fulfilment of his debts and obligations under this Ordinance, the Board may issue to such member a certificate to that effect and such certificate shall be deemed to be a full discharge from all debts and obligations incurred by such member under the provisions of this Ordinance at the date of his withdrawal from the society.

11. Where a co-operative society is a limited liability company incorporated or registered in the Colony in accordance with law the liability of the shareholders of such company shall be limited to the amount (if any) of the share capital not called up, and the provisions of section 10 of this Ordinance shall not apply to a person who has ceased to be a shareholder in such company.

Special provisions for limited company.

12. Notwithstanding anything contained in any other law the Secretary to the Board is hereby empowered to administer oaths and take solemn declarations in matters where statements upon oath and solemn declarations are required by the Principal Ordinance or by anything directed by the Board :

Secretary empowered to administer oaths, etc.

Provided that any fee payable in respect of any such oath or declaration shall be paid into the general revenues of the Colony or be accounted for by stamps.

13. Any mortgagee, chargee or other encumbrancer may by instrument under his hand agree that any mortgage, charge, or encumbrance in favour of the Bank shall have priority, either for the purposes of section 3 of this Ordinance or for any of the purposes of the Principal Ordinance over his mortgage, charge or encumbrance and such agreement when registered in the same manner as the mortgage, charge or encumbrance held by him shall for all purposes be binding upon the person agreeing and as from the date of such registration upon his successors in title. No stamp duty or registration fees shall be payable in respect of any such agreement.

Waiver of priority.

ORDINANCE No. V of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

An Ordinance to Amend the Criminal Procedure Code.

Date of commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Criminal Procedure Code (Amendment) Ordinance, 1934, and shall be read

No. 11 of 1930.

as one with the Criminal Procedure Code, hereinafter referred to as the Principal Ordinance.

Amendment of section 11 of the Principal Ordinance.

2. Section 11 of the Principal Ordinance is hereby amended by the addition at the end of sub-section (1) of the following proviso :—

“Provided that where a sentence of corporal punishment is imposed by any subordinate court in addition to a sentence of imprisonment or detention such sentence shall be subject to the confirmation of the Supreme Court as is provided in this sub-section and no such sentence of corporal punishment shall be carried into effect until confirmed by the Supreme Court.”

Amendment of section 288 of the Principal Ordinance.

3. Section 288 of the Principal Ordinance is hereby amended by the insertion of the words “ or evidence ” after the word “ statement ” which occurs in the first and fifth lines of the section.

Amendment of section 289 of the Principal Ordinance.

4. Section 289 of the Principal Ordinance is hereby amended as follows :—

(a) By the substitution of the following sub-section for sub-section (1) thereof :—

“(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence on oath (if any) of the accused person before the committing court has been given in evidence, the court shall inform the accused person of his right to address

the court, either personally or by his advocate (if any), to give evidence on his own behalf or to make an unsworn statement and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof the judge shall record the same."

(b) By the substitution of the words:—

"If the accused person informs the court that he does not wish to exercise any of the rights mentioned in the last preceding sub-section"

for the words—

"If he says that he does not"

which occur in the first line of sub-section (2) thereof.

ORDINANCE No. VI of 1934

Assented to in His Majesty's name this seventeenth day
of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

**An Ordinance to Amend the Arbitration
Ordinance.**

Date of
commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Arbitration (Amendment) Ordinance, 1934, and shall be read as one with the Arbitration Ordinance (Chapter 18 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

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

2. Sub-section (3) of section 9 of the Principal Ordinance is hereby amended by inserting after the words "clause (b)" in the second line thereof, the words "or under section fourteen A."

Statement
of case
pending arbi-
tration.

3. The following section is hereby inserted in the Principal Ordinance as section 14A :—

14A. Any arbitrator or umpire may at any stage of the proceedings under a reference and shall, if so directed by the court, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

ORDINANCE No. VII of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

[17TH MARCH, 1934.] Date of assent.

An Ordinance to Amend the Tax on Imported Packages Ordinance, 1933.

1st December, 1933

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 Tax on Imported Packages (Amendment) Ordinance, 1934, and shall be read as one with the Tax on Imported Packages Ordinance, 1933, hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into force on the first day of December, 1933.

Short title.

No. 38 of 1933.

2. The Governor in Council may enter into an agreement with the Government of the Mandated Territory of Tanganyika to provide that one party to the agreement shall transfer to the other party a portion of the tax collected under the Principal Ordinance, or under any Ordinance to the same intent which may be in force in such territory, in respect of articles which, having been imported into the territory of the one party in packages on which such tax has been collected, are removed into the territory of the other party.

Authority to enter into agreement for allocation of tax.

ORDINANCE No. VIII of 1934

Assented to in His Majesty's name this seventeenth day
of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

**An Ordinance to Provide for the Change of Titles
of Certain Public Officers.**

Date of
commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Public Officers
(Change of Titles) Ordinance, 1934.

Substitution
of new title
of a public
officer.

2. Wherever the title of the public officer set out in the
first column of the Schedule hereto appears in any Ordinance,
Rule, Regulation, Order or Notice now in force it shall be
deemed to be replaced by the corresponding title set out in
the second column of the said Schedule.

Provision for
future change
of titles.

3. Whenever any change of title of any public officer
occurs after the coming into operation of this Ordinance the
Governor, if occasion requires, may, by notice in the Gazette,
make any necessary substitution in or addition to the said
Schedule and the provisions of section 2 of this Ordinance
shall apply accordingly in conformity with every such
substitution or addition.

SCHEDULE.

Column I.

Column II.

Director of Medical and
Sanitary Services

Director of Medical Services.

ORDINANCE No. IX of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

[17TH MARCH, 1934.] Date of assent.

An Ordinance to Amend the Interpretation and General Clauses Ordinance.

17th March, 1934

Date of commencement.

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

1. This Ordinance may be cited as the Interpretation and General Clauses (Amendment) Ordinance, 1934, and shall be read as one with the Interpretation and General Clauses Ordinance (Chapter 1 of the Revised Edition), hereinafter referred to as the Principal Ordinance. Short title.
Cap. 1.

2. The Principal Ordinance is hereby amended by the addition of the following section:—

“26. Where in any Ordinance powers are conferred on or duties are appointed to be performed by a Provincial Commissioner, then, in districts which are not included in any province, such powers shall be exercised or such duties performed by the officer in charge of such district, and in any such case the word ‘province’ shall be construed as if it were equivalent to the word ‘district’ ”. Power of officers in charge of extra-provincial districts.

ORDINANCE No. X of 1934

Assented to in His Majesty's name this seventeenth day
of March, 1934.

J. BYRNE,
Governor.

Date of assent.

[17TH MARCH, 1934.]

**An Ordinance to Amend the Sugar (Amendment)
Ordinance, 1930.**

Date of
commencement.

17th March, 1934

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

Short title.

1. This Ordinance may be cited as the Sugar (Amendment) Ordinance, 1934, and shall be read as one with the Sugar (Amendment) Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

No. 8 of 1930.

Amendment of
section 2
of the
Principal
Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by the addition at the end thereof of the following proviso:—

“Provided that a Provincial Commissioner may by order permit in any prohibited area the gift, barter, sale, conveyance, delivery or supply, to a person who does not hold a permit, of sugar not exceeding a quantity to be specified in such order.”

ORDINANCE No. XI of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

[17TH MARCH, 1934.] Date of assent

An Ordinance to Impose a Levy on the Export of Sisal Fibre and to Regulate the Expenditure of the Proceeds thereof and of Sums Granted for the Purpose of the Improvement of the Sisal Industry.

By Proclamation

Date of commencement.

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

1. This Ordinance may be cited as the Sisal Industry Ordinance, 1934, and shall come into operation on such date as the Governor may, by proclamation in the Gazette, appoint.

Short title and commencement.

2. In this Ordinance—

Interpretation.

“committee” means the committee constituted by section 7 of this Ordinance;

“Director” means the Director of Agriculture;

“fund” means the fund established by section 6 of this Ordinance;

“sisal fibre” means the fibrous product derived from the plant *Agave rigida*, var. *sisalana* and allied species.

3. There shall be paid to the Commissioner of Customs a levy on all sisal fibre produced in and exported from the Colony.

Levy on sisal fibre exported.

4. Any person who exports or attempts to export from the Colony any sisal fibre without paying such levy thereon shall be guilty of an offence, and shall be liable, on conviction before a magistrate of the first or second class, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months.

Penalty.

5. (1) Not later than one month before the date on which this Ordinance is brought into operation the Governor, with the advice of the committee, shall by order fix the rate of such levy and such rate shall remain in force until a new rate is imposed in manner hereinafter provided.

Governor may alter rate of levy.

(2) Not later than the 30th day of September in any year the Governor, with the advice of the committee, may by order alter the rate of such levy, and such altered rate shall come into force on the 1st day of January next following the date of such order.

(3) The rate of such levy shall in no event exceed the sum of ten cents of a shilling on each hundredweight or part of a hundredweight of sisal fibre produced in and exported from the Colony.

Establishment
of fund.

6. (1) There shall be established a fund which shall consist of—

(a) all moneys collected from the levy on sisal fibre at the rate for the time being in force under this Ordinance;

(b) a grant-in-aid from the Government of a sum equal in amount to the sum collected from the said levy on sisal fibre; provided that the grant-in-aid payable in respect of the first year of operation of this Ordinance shall not exceed the sum of one thousand pounds; and provided further that in respect of any succeeding year any sum which would otherwise be payable by the Government in excess of one thousand pounds shall be such sum as may be determined by the Governor in Council;

(c) such other contributions or donations as may from time to time be made to the fund.

(2) Such fund shall be lodged with the Treasurer, and shall be placed by him to a separate suspense account in the name of the Director, who shall, with the consent of the committee, apply such moneys to the accomplishment of the objects and purposes of the fund.

(3) The Director shall keep account of the receipts and disbursements in connexion with the fund and shall render to the committee statements showing such revenues and expenditure as required by them.

(4) Within a reasonable time after the expiration of each year the committee 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.

7. (1) There shall be constituted a committee to be known as the Sisal Industry Committee, which shall consist of— Constitution
of committee.

- (a) the Director, who shall be chairman;
- (b) four members of whom one shall be a person associated with the sisal industry to be nominated by the Governor, and three shall be nominated by the Kenya Sisal Growers' Association.

(2) The members of the committee, other than the Chairman, shall hold office for one year, and each such member shall be eligible for renomination to the committee at the expiration of each year.

(3) If any member of the committee resign or die the authority which nominated such member may nominate another person to take the place of such member, and such person shall hold office until the expiry of the term of office of the member in whose place he is nominated and shall thereafter be eligible for renomination to the committee.

(4) If any member of the committee is absent from the Colony during his term of office the authority which nominated such member may appoint a fit and proper person to serve on the committee during the absence of such member.

(5) In the absence of the Director from any meeting of the committee a chairman for such meeting shall be chosen by the members present.

(6) The Director or, in his absence, the chairman shall have a casting vote.

(7) At its first meeting the committee shall fix the number required for a quorum and make rules for the conduct of its business.

(8) The Director shall at any time summon a meeting of the committee upon receipt of a requisition signed by two members of the committee calling upon him to do so.

8. The committee shall be a body corporate having perpetual succession and a common seal, and shall be capable in law of suing and being sued, and of purchasing, holding and alienating land and other property movable or immovable. The committee
to be a body
corporate.

Purposes to which funds may be devoted.

9. The fund shall be devoted to all or any of the following purposes—

- (a) experiment, investigation and research in connexion with the sisal industry;
- (b) the study of the economics of the production of sisal;
- (c) experiments in connexion with the improvement of machinery or plant for the production of sisal fibre;
- (d) the employment of such staff as the committee may think fit for the purpose of carrying out its functions;
- (e) such contribution towards the maintenance of the Kenya Sisal Growers' Association as the committee may from time to time determine;
- (f) the payment of travelling and out-of-pocket expenses to the members of the committee at rates to be approved by the Governor;
- (g) any other service which in the opinion of the committee is calculated to promote the welfare of the sisal industry and the more economic production of sisal fibre.

Commissioner of Customs powers of exemption.

10. The Commissioner of Customs on the advice of the Director may exempt any consignments of sisal fibre exported for exhibition or experiment from payment of the levy imposed by this Ordinance.

Duration of Ordinance.

11. This Ordinance shall continue in force until the 31st day of December, 1938, and shall then expire 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.

ORDINANCE No. XII of 1934

Assented to in His Majesty's name this seventeenth day of March, 1934.

J. BYRNE,
Governor.

[17TH MARCH, 1934.] Date of assent.

An Ordinance to Provide for the Exemption of Certain Natives from the Operation of Certain Laws.

17th March, 1934

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 Exemption Ordinance, 1934. Short title.

2. Any native belonging to a class specified in Schedule I hereto annexed may apply for a letter of exemption relieving him from the operation of the laws, rules or regulations set out in Schedule II hereto annexed to the extent specified in that Schedule : Exemption.

Provided that notwithstanding the provisions of this section a provincial commissioner may recommend to the Governor in Council that a native, not belonging to a class specified in Schedule I, may be granted a letter of exemption.

3. Every applicant for a letter of exemption shall apply by way of petition to the district commissioner of the district or the provincial commissioner of the province in which he ordinarily resides, and shall comply with the following requirements :— Application to be made by petition to district commissioner or provincial commissioner.

(a) The petitioner must state his full name (if the petitioner is already registered under the Native Registration Ordinance, the registration certificate must be produced), age, residence, place of birth, trade profession or calling. Cap. 127.

(b) In the case of a minister of religion, the date of ordination, by whom ordained and the religious denomination of which he is a minister.

(c) If the petitioner bases his application on the ground of possessing the educational qualifications prescribed in Schedule I, he must state the schools which he has attended and the periods for which he attended such schools.

Affidavit.

4. To every such petition there shall be attached an affidavit verifying the statements in the petition. The said affidavit shall have been sworn or solemnly declared or affirmed by the petitioner before a magistrate or justice of the peace of the Colony.

Penalty for false declaration.

5. Any person who shall wilfully and falsely swear, solemnly declare or affirm that his allegations in the said petition are true when in fact they are not shall be deemed to be guilty of perjury, and on conviction shall be liable to the penalties by law provided for that offence.

Issue of letters of exemption.

6. (1) If on receipt of an application for a letter of exemption the provincial commissioner of the province in which the applicant resides is satisfied that the applicant is a person to whom a letter of exemption may be issued, he may issue a letter of exemption in the form set out in Schedule III hereto.

Letters of exemption to be signed by provincial commissioner and record to be kept.

(2) Every letter of exemption shall be signed by the provincial commissioner of the province in which the applicant resides, and shall be registered and a copy thereof filed in the office of such provincial commissioner and shall contain such information for purposes of identification as such provincial commissioner may deem necessary. A serial number and the date of registration shall be recorded on every letter of exemption.

Oath of allegiance to be taken by applicant.

(3) No such letter of exemption shall be issued to any native applying therefor until he shall have taken an oath or made an affirmation of allegiance to His Majesty, His Heirs and Successors before some person authorized to administer the same.

(4) The names of all natives granted exemption under this Ordinance shall be published in the Gazette, and shall be submitted to the Governor in Council at least once in each year.

(5) Any applicant to whom a letter of exemption has been refused by the provincial commissioner of the province in which such applicant resides shall have a right of appeal to

the Governor. Such appeal shall be submitted through the provincial commissioner to the Governor within two months from the date of such refusal.

7. (1) A letter of exemption shall be valid during the life of the holder unless cancelled under the provisions of section 11 of this Ordinance.

Letter of exemption to be valid during the life of the holder.

(2) On the issue of a letter of exemption there shall be paid by the holder the sum of two shillings to the district commissioner or other officer effecting the issue.

Fee to be charged for issue.

8. (1) Any person using a letter of exemption to which he is not entitled shall be liable on conviction to a fine not exceeding twenty-five pounds, and in default of payment to imprisonment with hard labour for a period not exceeding six months, or to both such fine and such imprisonment.

Offence of using letter of exemption when not entitled, or transferring to person not entitled.

(2) Any person who shall transfer a letter of exemption to any other person with intent that the said letter of exemption shall be used by any person not entitled to use it shall be liable on conviction to a fine not exceeding twenty-five pounds, and in default of payment to imprisonment with hard labour for a period not exceeding six months, or to both such fine and such imprisonment.

9. In the event of the loss of a letter of exemption, application may be made to the district commissioner of the district or the provincial commissioner of the province in which the applicant resides for a duplicate, which may be granted on payment of a fee of two shillings.

In event of loss of letter of exemption a duplicate may be applied for.

10. In the event of the death of the holder of a letter of exemption or in the event of any person coming into possession of a letter of exemption to which he is not entitled, such person as shall come into possession of such letter of exemption shall return the same to the nearest district commissioner or magistrate, who shall forward the said letter of exemption to the provincial commissioner of the province in which the said letter of exemption was issued for cancellation or return to the proper holder, as the case may be. Failure to comply with the provisions of this section within one month from the date of such person coming into possession of the said letter of exemption shall be an offence punishable with a fine not

Persons to return letters of exemption if they come into their possession to the nearest district commissioner or magistrate.

exceeding five pounds, and in default of payment to imprisonment with hard labour for a period not exceeding three months, or to both such fine and such imprisonment.

**Cancellation
of letters of
exemption.**

11. A provincial commissioner shall have power to cancel any letter of exemption for any reason which appears to him sufficient.

**Wives and
children.**

12. A wife and children of the holder of a letter of exemption shall, while living with and in the company of such holder, be entitled to the same privileges as the holder of such letter of exemption: Provided that such privileges shall cease in the case of a male child when he attains the apparent age of sixteen and in the case of a female child upon her marriage.

**Alteration
of letter of
exemption.**

13. The Governor in Council shall have power to alter the form of the letter of exemption as set out in Schedule III.

Rules.

14. The Governor in Council shall have power to make rules for the better carrying out of the purposes of this Ordinance.

Repeal.

15. The Native Exemption Ordinance (Chapter 128 of the Revised Edition) is hereby repealed.

SCHEDULE I.

Any ordained clergyman of the Church of England.

Any ordained minister of the Church of Scotland.

Any ordained priest of the Church of Rome.

Any recognized minister of any other denomination.

Any admitted advocate.

Any registered medical practitioner or dentist.

Any registered chemist or druggist.

Any qualified engineer.

Any native who is recommended by the district commissioner and who has satisfied the Director of Education that his standard of education justifies the issue of an exemption certificate.

SCHEDULE II.

Any Ordinance or municipal by-laws dealing with order by night or residence in native locations.

The Native Authority Ordinance and amendments thereof *Cap. 129.* in so far as the said Ordinance and amendments thereof empower headmen or administrative officers of the Government to order out natives under their jurisdiction to perform work on native or on Government undertakings.

The Native Registration Ordinance and amendments thereof *Cap. 127.* thereof.

SCHEDULE III.

LETTER OF EXEMPTION ISSUED UNDER THE NATIVE EXEMPTION ORDINANCE, 1934.

No.

....., more particularly described on the back hereof, having proved to my satisfaction that he is and having satisfied me that he is a suitable person to hold a letter of exemption, and having taken an oath (made an affirmation) of allegiance to His Majesty, His Heirs and Successors, is hereby granted exemption from the operation of the laws, rules or regulations set out in Schedule II of the Native Exemption Ordinance, 1934.

.....
Provincial Commissioner.

Description of Native named on this Letter of Exemption.

Registration letters and number (if any)

Name

Other name known by, e.g. baptismal name, if any :

Father's name

Tribe

District

Present place of residence

Age

If married, name of wife or wives

No. of children :boys;girls.

If wife or wives and children living with husband

Where residing at this date

Trade, profession or calling

If an ordained minister, by whom ordained

Any distinctive features (prominent marks, etc.), build :

.....
Signature of holder.

(Photograph.)

ORDINANCE No. XIII of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

[29TH MAY, 1934.] Date of assent.

An Ordinance to Provide for the Maintenance of Order in Certain Districts within the Colony.

29th May, 1934

Date of commencement

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

- | | |
|--|---------------------------|
| <p>1. This Ordinance may be cited as the Special Districts (Administration) Ordinance, 1934.</p> | Short title. |
| <p>2. This Ordinance shall apply to and come into force in such districts and areas and from such date or dates as the Governor shall from time to time notify by proclamation, and in so applying this Ordinance the Governor may apply it wholly or in part to any such district or area and may exempt any person or class of persons from the operation of this Ordinance or of any part thereof.</p> | Application of Ordinance. |
| <p>3. The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force.</p> | Saving of other law. |
| <p>4. In this Ordinance, unless the context otherwise requires—</p> <p>“ District Commissioner ” means the district officer in charge of a district, and includes any district officer appointed by the Provincial Commissioner to exercise the powers of a District Commissioner under this Ordinance ;</p> <p>“ tribesman ” means a member of any tribe resident or being within the district or area to which this Ordinance has been applied, and includes a Somali ;</p> <p>“ arbitral tribunal ” means a tribunal established under this Ordinance.</p> | Interpretation. |

**Establishment
of arbitral
tribunals.**

5. (1) By an order under his hand, a Provincial Commissioner or a District Commissioner may establish within his province or district, as the case may be, such arbitral tribunals as he shall think fit, which shall exercise over tribesmen such jurisdiction as is given to them under the provisions of this Ordinance and within such limits as may be defined by such order.

(2) A Provincial Commissioner or a District Commissioner may at any time suspend, cancel or vary any order establishing an arbitral tribunal or defining the limits within which such jurisdiction may be exercised.

**Provincial and
District Com-
missioner may
sit as advisers.**

6. Every Provincial Commissioner or District Commissioner may sit as adviser in any arbitral tribunal in his province or district, as the case may be.

**Power to
summon
witnesses.**

7. (1) Every arbitral tribunal shall have power to summon before the tribunal any tribesman or any other person concerned in any matter under investigation and to produce before the tribunal such evidence as may be available.

(2) Any such tribesman or other person who shall without lawful excuse disobey or shall fail to comply with any summons lawfully issued under this section shall be guilty of an offence and shall, on conviction before a magistrate or before the tribunal having jurisdiction over such tribesman or other person, be liable to imprisonment for a period not exceeding two months or to a fine not exceeding five pounds and in default of payment to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

**Imposition of
restraint on
hostile tribe.**

8. In the event of any tribe or any section or members of such tribe acting, in the opinion of the Provincial Commissioner or of the District Commissioner, in a hostile manner towards the Government or towards any foreign power in amity with the Government or towards any persons being or residing in the Colony, the Provincial Commissioner or the District Commissioner in charge of the district or area in which such acts are committed may order in writing—

(a) the arrest wherever they may be found within the said district or area of all or any of the members of such tribe;

- (b) the seizure of all or any property belonging to such tribe or its members, or any of them, which may be found within the said district or area;
- (c) the detention in safe custody of any person or property so arrested or seized;
- (d) that all or any members of such tribe shall not leave the area reserved for their use.

9. (1) Where any person or persons has or have been arrested or property seized under the last preceding section, the Provincial Commissioner or the District Commissioner shall, with as little delay as possible, hold or cause to be held an inquiry into the circumstances relating to the alleged hostile acts. Inquiry relating to hostile acts.

(2) Upon proof that any person or persons so arrested or from whom property has been so seized has or have acted in a hostile manner as described in the last preceding section, such person or persons shall be deemed to have committed an offence and shall, in addition to any punishment provided by this Ordinance, be liable to have any property of his or their seized under that section confiscated and sold, the money realized from such sale being paid in the general revenue of the Colony.

10. (1) If any court or arbitral tribunal has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court or arbitral tribunal may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. Proclamation for person absconding.

- (2) The proclamation shall be published as follows:—
 - (a) It shall be publicly read in some conspicuous place of the town or village or district in which such person ordinarily resides or, if such person has no ordinary place of residence in the Colony, in which he was last known to be residing;
 - (b) It shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village or district; and

(c) A copy thereof shall be affixed to some conspicuous part of the court house.

(3) A statement in writing by the court or arbitral tribunal issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of
property of
person
absconding.

11. (1) The court or arbitral tribunal issuing a proclamation under the last preceding section may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the limits of any district or area to which this Ordinance applies.

(3) If the property ordered to be attached is movable, the attachment under this section shall be made—

(a) by seizure; or

(b) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(c) by either of such methods, as the court or arbitral tribunal thinks fit.

(4) If the property ordered to be attached is immovable, attachment under this section shall be made—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any of such methods, as the court or arbitral tribunal thinks fit.

(5) If the property ordered to be attached consists of live stock or is of a perishable nature, the Provincial Commissioner may if he thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide his order.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XXXVIII of the Civil Procedure Rules, 1927.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of attachment, unless it is subject to speedy and natural decay, or the Provincial Commissioner considers that the sale would be for the benefit of the owner, in either of which cases the Provincial Commissioner may cause it to be sold when he shall think fit.

12. If within two years from the date of the attachment, any person whose property is or has been at the disposal of the Government under the last preceding section, appears voluntarily or is apprehended and brought before the court or arbitral tribunal by whose order the property was attached and proves to the satisfaction of such court or arbitral tribunal that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him, if the Provincial Commissioner consents in writing to such course being taken.

Restoration
of attached
property.

13. (1) Where a blood feud or other cause of quarrel likely to lead to bloodshed exists or, in the opinion of the Provincial Commissioner or the District Commissioner, is likely to arise between two sections of tribesmen, the District Commissioner may, on the recommendation of an arbitral tribunal or after an inquiry, order all or any of the tribesmen of both sections or of either section to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years as he may fix :

Security from
sections of
tribesmen in
case of blood
feud.

Provided that the principal members of the section from which it is proposed to require a bond under this section shall be given an opportunity of showing cause why a bond should not be required.

(2) A bond executed under this section shall be liable to be forfeited if the persons bound thereby to be of good behaviour or to keep the peace, as the case may be, commit or

attempt to commit or abet the commission of any offence punishable with imprisonment in respect of any member of the opposite section to which the bond related.

(3) If, while a bond executed under this section is in force, the life of any member of the section is unlawfully taken or attempted, the District Commissioner may declare the bond of all or any of the members of the other section and their sureties (if any) to be forfeited, unless it is shown to his satisfaction that the murder or attempt was not committed by or in consequence of the abetment of any member of that section.

Reference of disputes to arbitral tribunals.

14. (1) Where a Provincial Commissioner or a District Commissioner is satisfied that a dispute exists which is likely to cause a blood feud or murder or manslaughter or mischief or a breach of the peace, such Provincial Commissioner or District Commissioner may, if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequences anticipated and if a suit is not pending in respect of the dispute, make an order in writing, stating the grounds of his being so satisfied, referring the dispute to an arbitral tribunal requiring the tribunal to come to a finding on the matters in dispute after making such inquiry as may be necessary and after hearing the parties.

(2) The order of reference made under sub-section (1) shall state the matter or matters on which the finding of the arbitral tribunal is required.

Powers of Provincial and District Commissioner on receiving of the findings.

15. On receipt of the finding of the arbitral tribunal under the preceding section, the Provincial Commissioner or the District Commissioner, as the case may be, may—

- (a) remand the case to the arbitral tribunal for a further finding;
- (b) refer the case to a court;
- (c) pass an order in accordance with the finding of the arbitral tribunal of not less than three-fourths of the members on any matter stated in the reference; or
- (d) alter any order which he may have made, as he may think fit.

Power to remove persons in certain cases.

16. Where after inquiry the Provincial Commissioner or District Commissioner is satisfied that any person within the district or area under his jurisdiction—

- (a) is conducting himself so as to be dangerous to peace and good order; or
- (b) has a blood feud; or
- (c) has created a cause of quarrel likely to lead to bloodshed,

such Provincial Commissioner or District Commissioner may by order in writing require such person to reside in such place as may be specified in the order: Provided that if such Provincial Commissioner or District Commissioner requires such person to reside outside the area under his jurisdiction he shall not make an order without the sanction of the Governor.

Failure to comply with the terms of any order made under this section shall be an offence under this Ordinance.

17. Whenever it appears expedient to the Provincial Commissioner he may, by order in writing—

Reservation of grazing and other areas.

- (a) reserve for any particular tribesmen or community such grazing or other areas or watering facilities within the area under his jurisdiction as are in his opinion necessary for their use;
- (b) prohibit the use by any tribesmen of any specified grazing or other areas or water;
- (c) direct the removal of any village situate in close proximity to the frontier of the Colony to such site as may be deemed suitable, due regard being had to the amount of grazing grounds and watering places required by the inhabitants concerned, and, with the sanction of the Governor, award to the inhabitants such compensation for any loss which may have occasioned to them by the removal of their village as, in the opinion of the Provincial Commissioner, is just.

Failure to comply with any order or direction given under this section shall be an offence under this Ordinance.

18. No person shall leave the district or area to which this Ordinance has been applied unless such person is in possession of a valid passport or other document satisfactorily establishing his identity issued to him in such form and under such conditions as the Governor in Council may from time to time prescribe.

Passports to be carried while leaving areas.

Members of
arbitral
tribunals
taking
rewards.

19. Whoever, being or expecting to be a member of an arbitral tribunal, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any act as a member of such tribunal, or for showing or forbearing to show as a member of such tribunal favour or disfavour to any person, shall be liable, on conviction before a subordinate court of the first or second class, to imprisonment for a period not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

Taking
rewards for
influencing
arbitral
tribunals.

20. Whoever accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification or reward whatever, whether in money or otherwise, for inducing or attempting to induce by corrupt or illegal means or by personal influence any arbitral tribunal, or any member thereof, to do or forbear to do any act which such tribunal or member is authorized to do in the exercise of lawful jurisdiction or to show favour to any person, shall be liable, on conviction before a subordinate court of the first or second class, to imprisonment for a period not exceeding one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

Penalty for
false evidence

21. Whoever in any proceeding before an arbitral tribunal gives evidence, whether upon oath or otherwise, which he knows to be false or believes to be false or does not believe to be true, shall be guilty of an offence and shall be liable, on conviction before a subordinate court of the first or second class, to imprisonment for a period not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

General
penalty.

22. Any person who is guilty of an offence against any of the provisions of this Ordinance in respect of which no penalty is specifically provided shall be liable, on conviction before a subordinate court of the first or second class, to a fine of one hundred pounds or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Procedure in
inquiries.

23. An inquiry under this Ordinance shall be conducted in the same manner, as far as may be, as an inquiry under the law relating to criminal procedure.

24. A fine imposed under this Ordinance may be collected by distress, and, in default of distress, imprisonment for any term not exceeding one year may be imposed. Distress.

25. (1) Any person aggrieved by any order made by a District Commissioner under this Ordinance may within thirty days from the date of such order appeal therefrom to the Provincial Commissioner. Finality of orders.

(2) Any person aggrieved by an order made by a Provincial Commissioner, or made by a Provincial Commissioner upon appeal from a District Commissioner may within thirty days from the date of such order appeal therefrom to the Governor whose decision shall be final.

26. The Provincial Commissioner may order the whole or any part of the fines recovered under this Ordinance to be held in trust for the benefit of the tribesmen of the area under his jurisdiction and applied to any purpose approved by the Governor. Power to dispose certain fines.

27. The Provincial Commissioner shall report to the Governor every order made under sections 8, 16 and 17 of this Ordinance and the grounds thereof and the proceedings thereunder. Reports to the Governor.

28. No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Ordinance, whether or not within the limits of his jurisdiction : Indemnity to officers and persons acting in good faith.

Provided that at the time of such act or order he believed in good faith that he had jurisdiction to do such act or to make such order; and no person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Ordinance shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if the person issuing the same had been acting in the exercise of lawful authority.

29. The Governor in Council may make Rules for prescribing anything which under this Ordinance is to be prescribed and generally for carrying into effect the provisions of this Ordinance. Power to make Rules.

30. This Ordinance shall continue in force until the 31st day of December, 1935, and shall then expire: Provided that the Governor may, with the approval of the Secretary of State and the Legislative Council, by proclamation declare that this Ordinance shall remain in force until a date to be fixed in such proclamation or until repealed. Duration of Ordinance.

ORDINANCE No. XIV of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

Date of assent.

[29TH MAY, 1934.]

An Ordinance to Amend the Immigration Restriction Ordinance.

Date of commencement

29th May, 1934

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

Short title.

1. This Ordinance may be cited as the Immigration Restriction (Amendment) Ordinance, 1934, and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Amendment of section 5 of the Principal Ordinance.

2. Section 5 of the Principal Ordinance is hereby amended—

- (1) by the insertion of the words "by the Governor" immediately after the word "deemed" in the fifth line of paragraph (d); and
- (2) by the addition at the end thereof of the following proviso:

"Provided that the Governor may permit any of the persons mentioned in paragraphs (a), (b), (c), (d), (e) and (g) of this section to enter the Colony upon bonds, with or without securities, for good behaviour being entered into by or on behalf of such persons upon such conditions and as to such amount as the Governor may determine."

ORDINANCE No. XV of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

[29TH MAY, 1934.] Date of assent.

An Ordinance to Amend the Northern Frontier Province Poll Tax Ordinance, 1930.

29th May, 1934

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 Northern Frontier Province Poll Tax (Amendment) Ordinance, 1934, and shall be read as one with the Northern Frontier Province Poll Tax Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 53 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by inserting therein the following definition :—

Amendment of section 2 of the Principal Ordinance.

“ ‘headman’ includes a manyatta elder.”

3. Section 6 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Repeal and replacement of section 6 of the Principal Ordinance.

“6. (1) The poll tax leviable under this Ordinance shall be payable on the first day of January in each year.

Poll tax, when payable.

(2) Any tribesman who without reasonable excuse shall make default in the payment of the poll tax shall be liable on conviction to imprisonment for a period not exceeding one month or to a fine not exceeding three times the amount of tax due.

Penalty for non-payment of poll tax.

(3) The magistrate may when passing judgment order that the whole or any part of the fine recovered shall be applied in payment of the poll tax due.

(4) Imprisonment under this section shall not operate as a satisfaction or extinguishment of the judgment debt.”

Amendment
of section 10
of the
Principal
Ordinance.

4. Sub-section (1) of section 10 of the Principal Ordinance is hereby amended by the deletion of the words "three months" in the fourth line thereof and the substitution therefor of the words "one month".

Amendment of
section 11 of
the Principal
Ordinance.

5. Sub-section (2) of section 11 of the Principal Ordinance is hereby amended by deleting the words "within three months from the date of such communication" in the fourth and fifth lines thereof and substituting therefor the words "within such period as the Governor shall consider reasonable (which period shall be communicated to the tribe at the same time as the above-mentioned communication)."

ORDINANCE No. XVI of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

[29TH MAY, 1934.] Date of assent.

An Ordinance to make Special Provision in regard to the Pension of Walter Harragin.

29th May, 1934

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 Harragin Pension Ordinance, 1934. Short title.

2. Notwithstanding the proviso to Regulation 10 of the European Officers' Pensions (Consolidation) Regulations, 1930, the service of Walter Harragin from the 5th day of October, 1933, to the 24th day of January, 1934, both days inclusive, shall be deemed to be pensionable service for the purposes of the European Officers' Pensions Ordinance, 1927, as if during that period he were the substantive holder of the office of Attorney General, and shall count for pension and gratuity under the said Ordinance. Pensionability of service of **W. Harragin** from the 5th October, 1933, to the 24th January, 1934. No. 11 of 1927.

ORDINANCE No. XVII of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

Date of assent. [29TH MAY, 1934.]

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

Date of commencement *29th May, 1934*

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

Short title. **1.** This Ordinance may be cited as the Widows' and Orphans' Pension (Amendment) Ordinance, 1934, 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.

Amendment of section 4A of the Principal Ordinance. **2.** Sub-section (3) of section 4A of the Principal Ordinance is hereby amended by the deletion of the word "scheme" in the first line thereof and the substitution therefor of the word "section".

Amendment of section 27 of the Principal Ordinance. **3.** Sub-section (1) of section 27 of the Principal Ordinance is hereby amended by the deletion of paragraphs (b) and (c) thereof and the substitution therefor of the following paragraph:—

“(b) retires on pension or otherwise leaves the East African service, and in either case his service is of such a nature and of such length as would have rendered him eligible for a pension if he had been retired from the East African service on medical certificate,”

1934

Widows' and Orphans' Pension

No. XVII

4. Notwithstanding anything contained in section 10 of the Widows' and Orphans' Pension (Amendment) Ordinance, 1932, the officers enumerated in the Schedule hereto shall be deemed to have exercised their option under section 9 of that Ordinance.

Certain officers to be deemed to have exercised option.
No. 28 of 1932.

SCHEDULE.

D. V. Lester.	<i>Walt. Boarding</i>
E. S. Prior.	<i>Walt. Boarding</i>
E. J. Straughan.	<i>Walt. Boarding</i>
C. R. Levie.	<i>Walt. Boarding</i>
C. E. Phillips.	<i>Walt. Boarding</i>
W. Manger.	<i>Asst-Superintendent (Technical Training)</i>

ORDINANCE No. XVIII of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

Date of assent. [29TH MAY, 1934.]

An Ordinance to Provide for the Establishment and Regulation of Post Offices and the Conveyance of Mails.

Date of commencement *29th May, 1934*

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

Short title. 1. This Ordinance may be cited as the Post Office Ordinance, 1934.

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

“contract packet” means any vessel, including an aeroplane or airship, for the conveyance of mails pursuant to contract or continuing arrangement;

“fictitious postage stamp” means any facsimile or imitation or representation of any label, stamp or device for denoting postage issued under this Ordinance or by the Imperial Postmaster General or by the Government of any part of His Majesty's dominions or by any country under the protection of His Majesty or by any territory in respect of which a mandate has been accepted by His Majesty or by any foreign country;

“franking machine” means a machine for the purpose of making impressions on postal articles to denote prepayment of postage and includes any meter or meters and any franking or date-stamping die or dies incidental thereto;

“mail bag” means any bag, box, basket, parcel or other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article;

“master of a vessel” means any person in charge of a vessel, an aeroplane or an airship, excepting a sea pilot;

“officer of the Post Office” includes any person employed in any business of the Post Office or on behalf of the Post Office;

“the Post Office” means the department established for the purpose of carrying the provisions of this Ordinance into effect and presided over by the Postmaster General;

“post office” includes every house, building, room, vessel, carriage or place used for the purpose of a post office, and every letter box provided by the Post Office for the receipt of postal articles;

“postage” means the duty chargeable for the transmission by post of postal articles;

“postal article” includes any letter, postcard, newspaper, book, document, pamphlet, pattern or sample packet, parcel or package or other article whatsoever transmissible by post whether in a closed mail or placed loose on board any conveyance for delivery to a post office;

“postage stamp” means any label or stamp or device for denoting any rate of postage payable in respect of postal articles, issued under this Ordinance, or by the Imperial Postmaster General or by the Government of any part of His Majesty’s dominions or by any country under the protection of His Majesty or by any territory in respect of which a mandate has been accepted by His Majesty or by any foreign country;

“Postmaster General” includes a Deputy Postmaster General or other officer exercising the powers of a Postmaster General;

“vessel” includes an aeroplane or an airship not being a contract packet.

3. For the purposes of this Ordinance—

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being posted at or delivered to a post office to the time of its being delivered to, or taken delivery of by, the addressee or its being returned to the sender or otherwise disposed of under the provisions of this Ordinance;
- (b) a postal article shall be deemed to cease to be such from the time of its being delivered to, or taken

Meaning of
“in course of
transmission
by post.”

delivery of by, the addressee or of its being returned and delivered to the sender or otherwise disposed of under the provisions of this Ordinance;

- (c) the placing of an article in any receiving box for the deposit of postal articles, or the delivery of an article to an officer of the Post Office in the course of his duties shall be deemed to be delivery to a post office;
- (d) the delivery of a postal article at the house or office of the addressee or to the addressee (or to his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee) or the inclusion of a postal article in the addressee's private box or bag, or, where the addressee is a guest or is resident at an hotel, delivery to the proprietor or manager thereof or to his agent, shall be deemed to be delivery to the addressee.

**Appointment
of officers of
the Post Office.**

4. (1) The Governor may appoint such officers of the Post Office as may be necessary for the carrying into effect of the provisions of this Ordinance. All officers serving in the Post Office on the commencement of this Ordinance shall be deemed to have been appointed under this Ordinance.

**Declaration to
be made by
officers of the
Post Office.**

(2) No person shall be employed in the Post Office unless he has first made and subscribed before a magistrate the declaration contained in the schedule hereto.

(3) No stamp duty shall be payable on any such declaration.

**Powers of
Postmaster
General.**

5. (1) The Postmaster General subject to the special or general directions of the Governor may—

- (a) enter into such contracts as may be necessary for the conveyance of postal articles or otherwise for the carrying into effect of the provisions of this Ordinance;
- (b) establish post offices at any place in the Colony, and close any post office; and
- (c) determine at what post offices orders for the payment of money may be issued and paid.

(2) All post offices heretofore established in the Colony shall be deemed to be established under this Ordinance.

6. (1) Wheresoever postal communications are established the Postmaster General by himself or by the officers of the Post Office, shall have the exclusive privilege of conveying from one place to another whether by land or by sea or by air, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters, except in the following cases—

Exclusive
privilege of
Postmaster
General.

- (a) letters carried by a private friend on his way, journey or travel for delivery by such friend to the person or persons to whom they are directed without hire, reward or other profit or advantage for receiving, carrying or delivering them;
- (b) letters sent by a messenger on purpose, solely concerning the affairs of the sender or receiver thereof;
- (c) letters solely concerning goods or other property, sent by land or by sea or by air, to be delivered with the goods or property which such letters concern, without hire, reward or other profit or advantage for receiving, carrying or delivering them :

Provided that such letters are open to inspection and have superscribed thereon the words "Consignee's letters" or other words to the same effect.

(2) Nothing herein contained shall authorize any person to make a collection of letters, except as aforesaid for the purpose of sending them otherwise than by post.

(3) Subject as aforesaid the following persons are especially forbidden to collect, carry, tender or deliver letters or to receive letters for the purpose of carrying or delivering the same, although they shall not receive hire, reward or other profit or advantage for so doing—

- (a) common carriers of passengers or goods and their drivers, servants or agents except as regards letters solely concerning goods in their carriages or conveyances; and
- (b) owners or masters of contract packets or vessels plying to or from any port or place within the Colony, and their servants or agents, except as regards letters solely concerning goods on board, such letters being

open to inspection and having the words "Consignee's letters" or other words to the same effect superscribed thereon, and except as regards letters tendered to a master of a contract packet or vessel by an officer of the Post Office for conveyance, or letters received under section 32 (3);

(c) passengers or other persons on board of such contract packets or vessels.

(4) For the purpose of this section "letters" include post-cards.

No letters to be conveyed except by post.

7. No letters, unless exempted by law, shall be conveyed into or out of the Colony, from or to any place between which and the Colony postal communications are established, or be delivered or be distributed in the Colony otherwise than by or through the Post Office.

Exemption from liability for loss, misdelivery, delay or damage.

8. (1) The Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post.

(2) No officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has knowingly caused the same fraudulently or maliciously or by his wilful act or default.

(3) The Government shall not incur any liability by reason of the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee.

Refund of wrong payment of money order.

9. If any person without reasonable excuse, the burden of which shall lie on him, neglects or refuses to refund—

(a) any amount paid to him in respect of a money order by an officer of the Post Office, in excess of what ought to have been paid to him in respect thereof; or

(b) the amount of a money order paid by an officer of the Post Office to him, instead of to some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the Post Office authorized by the Postmaster General in this behalf from the person so neglecting or refusing as if it were a civil debt recoverable summarily due from him.

10. The Governor in Council may by rule fix the rates of postage to be paid in respect of—

The rates of postage, how determined.

- (a) all classes of postal articles;
- (b) late fees;
- (c) fines on postal articles when incorrectly posted or when the postage is not prepaid or is insufficiently prepaid;
- (d) redirection of postal articles and the transmission by post of articles so redirected, either free of charge or subject to such further charges as may be prescribed;
- (e) the registration of newspapers for transmission within the area comprising the Colony, the Uganda Protectorate and the Tanganyika Territory;
- (f) fees for express delivery of postal articles, in addition to or instead of any postage chargeable thereon under this Ordinance;
- (g) the commission or fees to be charged to a person remitting or receiving money through the Post Office; and
- (h) similar matters.

11. (1) The Governor may cause to be provided postage stamps, stamped envelopes, stamped wrappers, stamped envelopes for registered postal articles, stamped postcards and international and Imperial reply coupons, and the Post Office shall have the exclusive privilege of issuing the same:

Stamps, envelopes, etc., to be issued by the Post Office.

Provided that the Postmaster General may appoint persons to retail the same under such conditions as he may deem reasonable.

(2) Any person so appointed who shall sell any such postage stamps, stamped envelopes, stamped wrappers, stamped envelopes for registered postal articles, stamped postcards and international and Imperial reply coupons at a rate other than that fixed by the Postmaster General shall be liable on conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding six months.

Prepayment
of postage.

12. All postage and other charges imposed under this Ordinance shall be prepaid by means of postage stamps, impressions of franking machines used under licence issued by the Postmaster General, or official post office stamping dies, which shall be affixed to all postal articles liable to such postage to the amount of the rates of postage payable thereon :

Provided that the Postmaster General may determine other means of payment for such classes of postal articles as he may specify :

Provided further that the Postmaster General may specify the conditions with regard to perforation, defacement, and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other charges.

Postage
stamps to be
deemed stamps
for the
purpose of
revenue.

13. Postage stamps, stamped envelopes, stamped wrappers, stamped envelopes for registered postal articles, stamped postcards and international and Imperial reply coupons provided under section 11 and impressions of franking machines used under licence issued by the Postmaster General and official post office stamping dies authorized under section 12 shall be deemed to be postage stamps issued by Government for the purpose of revenue within the meaning of the Penal Code.

No. 10 of 1930.

Charges on
unpaid or
insufficiently
prepaid postal
articles.

14. The following rates of postage shall be chargeable on delivery of postal articles where the postage is unpaid or insufficiently prepaid :—

- (a) Where the postage is unpaid, double the prepaid rate.
- (b) Where the postage is insufficiently prepaid, double the deficiency : provided that the minimum charge shall be ten cents.

Liability for
payment of
postage.

15. (1) The person to whom any postal article shall be tendered for delivery on which postage or any other sum is due shall be bound to pay the postage or other sum due on his accepting delivery of the postal article unless he forthwith returns it unopened.

(2) If any postal article appears to the satisfaction of the Postmaster General to have been maliciously sent for the purpose of annoying the addressee he may remit the postage or other sum due.

(3) If any postal article on which the postage or any other sum chargeable is due, is refused or returned as aforesaid or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or other sum due thereon.

1934

Post Office

No. XVIII

16. (1) If any person refuses to pay any postage or other sum which he is legally bound to pay in respect of any postal article, the Postmaster General may withhold from the person so refusing any postal article addressed to that person, not being on His Majesty's Service, until such postage or other sum shall have been paid.

Recovery of postage and other sums due in respect of postal articles.

(2) All postage or other sum imposed by or under this Ordinance may be sued for and recovered with full costs of suit before any magistrate on the complaint of any officer in charge of a post office.

17. In every proceeding for the recovery of any postage or other sum alleged to be due under this Ordinance in respect of a postal article—

Post Office mark prima facie evidence.

(a) the production of a postal article having thereon the official mark of the Post Office or the signature or the initials of an officer in charge of a post office denoting that the article has been refused or unclaimed or that the addressee is dead or cannot be found shall be prima facie evidence of the fact so denoted; and

(b) the person from whom the postal article purports to have come shall, until the contrary is proved, be deemed to be the sender thereof.

18. The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the Post Office or the Imperial Post Office or to the postal department of any of His Majesty's dominions or any country under the protection of His Majesty or any territory in respect of which a mandate has been accepted by His Majesty or any foreign country shall be conclusive evidence for all purposes that the sum denoted as aforesaid is due.

Official mark to be evidence of amount of postage.

19. (1) The Postmaster General or any officer of the Post Office may detain and withhold from delivery, any postal article bearing or containing any fictitious postage stamp; or purporting to be prepaid with any postage stamp previously used to prepay any other postal article or for the payment of any revenue duty or tax.

Power to detain postal articles to which fictitious stamps have been affixed.

(2) Any postal article detained under this section shall be dealt with as the Postmaster General may direct, but shall not be delivered to the addressee without a direction by the Postmaster General to that effect nor unless such addressee shall undertake to return immediately the portion of the postal article which bears the address and the fictitious or previously used stamp or if the postal article is inseparable from the stamp then the entire postal article and to give such information with regard to the name and address of the sender and such other particulars as the Postmaster General shall require.

(3) Any person who having given such undertaking fails or refuses to comply therewith shall be liable to a fine not exceeding five pounds.

Power to make rules as to liability for compensation.

20. The Governor may make rules prescribing the conditions under which compensation shall be payable for the loss of or damage to a postal article.

Power of Postmaster General to make regulations.

21. (1) The Postmaster General may make regulations—

- (a) for the guidance and control of the public in the course of its dealings with the Post Office;
- (b) for the disposal of undelivered postal packets;
- (c) in connexion with the licensing and use of franking machines for the prepayment of the postage;
- (d) declaring what articles may be transmitted as postal articles, and what articles are prohibited from being so transmitted;
- (e) classifying postal articles for the purposes of postal charges;
- (f) specifying conditions for the registration and insurance of postal articles;
- (g) specifying conditions for the issue and payment of money at post offices;
- (h) specifying the conditions under which and the manner in which special services will be performed for the convenience of any person;
- (i) specifying the conditions for the acceptance of cash on delivery postal articles;
- (j) specifying the hours during which post offices shall be opened for the transaction of various classes of public business;
- (k) specifying the hours during which postal articles may be posted.

(2) All such regulations shall, in addition to being published in the Gazette, be published in a guide issued by the Postmaster General and known as the Post Office Guide.

(3) The Postmaster General may include in such Post Office Guide—

- (a) a declaration of the adoption of the regulations agreed upon by the Universal Postal Union for or respecting or in relation to the transmission of postal articles and that the same or any part or modification thereof shall be enforced within the Colony;
- (b) a statement of the rates of postage and other charges fixed by the Governor in Council under section 10;
- (c) any rules made by the Governor under section 20;
- (d) a statement of the late fee charges for postal articles;
- (e) a statement of the manner in which amendments to the Guide will be published;
- (f) any matter which the Postmaster General is empowered to specify under this Ordinance and such other information as he may think fit to include.

22. (1) The Postmaster General may specify the conditions subject to which any postal article in course of transmission by post may be redelivered to the sender without reference to the consent of the addressee.

Redelivery to sender of postal article in course of transmission by post.

(2) Save as provided by the conditions specified under subsection (1) the sender shall not be entitled to recall a postal article in course of transmission by post.

23. The transmission by post of any postal article of a seditious character or having thereon any words, marks, or design of a scurrilous, threatening, indecent, obscene, or grossly offensive character is prohibited and the Postmaster General shall have power to withdraw from transmission such postal articles which shall be dealt with as the Governor may direct.

Seditious postal articles.

24. The Postmaster General shall have power to withdraw from transmission by post any articles prohibited under section 21 (d), and shall dispose of them as the Governor, by any special or general instruction, may direct.

Withdrawal from transmission of prohibited articles.

25. (1) If the Postmaster General has reason to believe that any postal article contains goods in respect of which an offence is being committed or is being attempted to be committed or if he is requested to do so by the Commissioner of Police or any officer of police not below the rank of Superintendent of Police he shall require by notice in writing the attendance at the post office at a specified time of the addressee

Power to deal with postal articles containing goods in respect of which an offence is being committed.

of such postal article or of some agent deputed in writing by such addressee and of the person, if any, who made the request, or his agent deputed in writing and such postal article shall then be opened by the addressee or his agent in the presence of an officer of the Post Office deputed for the purpose by the Postmaster General and of any other person named or referred to in the notice who attends.

(2) If the addressee or his agent fails to attend in pursuance of the notice or refuses to open the article the same shall be opened by the officer of the Post Office in the presence of any of the persons named, or referred to in the notice who attend.

(3) In all cases a postal article, after being opened under this section, shall be delivered to the addressee unless it is required for the purpose of any further proceedings under this or any other Ordinance or rule for the time being in force.

Withdrawal of postal articles in interests of justice.

26. (1) After any postal article has been delivered to a post office no officer of the Post Office shall, except as otherwise prescribed, open or return the same to any person or procure or suffer the same to be opened or returned unless he is authorized to do so by express warrant in writing under the hand of the Governor.

Any officer of the Post Office who is guilty of a breach of the provisions of this sub-section shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding one year.

(2) The Governor may, in the interests of justice or in any individual circumstance which appears to him to warrant such a course, grant his warrant for opening or returning any specified postal articles.

Interception of postal articles in public emergency.

27. (1) On the occurrence of any public emergency or in the interest of public safety or tranquillity, the Governor may, by an order in writing addressed to the Postmaster General, direct that any postal articles or class or description of postal articles shall be intercepted or detained or shall be delivered to any officer of Government mentioned in the order, to be disposed of in such manner as the Governor directs.

(2) If any doubt arises as to the existence of a public emergency or as to whether any act done under the last preceding sub-section was in the interest of public safety or tranquillity a certificate signed by the Governor shall be conclusive proof on the point.

28. Any mail bag may be detained or opened under the written authority of the Postmaster General.

Power to detain and open a mail bag.

29. (1) Every master of a contract packet or vessel arriving at any port or place in the Colony shall without delay cause every postal article or mail bag on board which is within the exclusive privilege conferred on the Postmaster General by section 6 to be delivered to a post office or to such officer of the Post Office as is authorized by the Postmaster General to receive the same.

Duty of master arriving at any port in the Colony to deliver mail bags without delay.

(2) If there is on board a contract packet or vessel any postal article or mail bag which is within the exclusive privilege aforesaid, the master shall without delay report the fact to the officer in charge of the post office at the port of arrival and act according to the direction he may receive from such officer and if such postal article or mail bag is delivered to such officer as aforesaid, the receipt of such officer shall discharge the master from all further responsibility in respect of the postal article or mail bag.

30. (1) The master or agent of any contract packet or vessel which is about to depart from any port within the Colony shall give to an officer in charge of the post office at the port from which the contract packet or vessel is about to depart, notice in writing of the intended time of departure and the ports of call and destination of that contract packet or vessel. Such notice, in case the destination of the vessel be any port outside the Colony, shall be given not less than twenty-four hours, and in case the destination be any port within the Colony, not less than three hours, before the intended time of departure. Every such notice shall expire between the hours of eight o'clock in the forenoon and six o'clock in the afternoon :

Notice to be given to post office of departure of contract packet or vessel.

Provided that a shorter notice may be allowed by the Postmaster General or the officer in charge of the post office at the port of departure in any case or special class of cases.

(2) Any such master or agent shall give notice to the said officer in charge of the post office of any postponement of departure exceeding one hour, immediately after the postponement is decided upon.

(3) Any such master or agent who omits to give either of such notices or who departs from the port before the time mentioned in the notice aforesaid shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

Duty of master of vessel departing from a port in the Colony not being contract packet to carry mail bags.

31. Every master of a vessel, not being a contract packet, about to depart from any port or place in the Colony to any port or place within, or any port or place beyond the limits of the Colony, shall receive on board any mail bag tendered to him by any officer of the Post Office for conveyance, granting a receipt therefor in such form as the Postmaster General may prescribe, and shall without delay deliver the same at the port or place to which such mail bag is consigned; and in default of compliance with any provisions of this section he or the agent shall be liable on conviction to a penalty not exceeding one hundred pounds.

Reception of postal article on board by officer of Post Office or by master of vessel.

32. (1) Any officer of the Post Office, duly authorized by the Postmaster General, may attend on board any contract packet or vessel after the time for closing the mail by such contract packet or vessel and receive, subject to the other provisions of this Ordinance, all postal articles fully prepaid as prescribed by section 12 which may be brought on board up to the time of departure, to be transmitted by such contract packet or vessel.

(2) The master of every such contract packet or vessel shall give all proper facilities to such officer of the Post Office to enable him to discharge his duties and to leave the contract packet or vessel before her departure.

(3) If there be no officer of the Post Office on board such contract packet or vessel, the master may receive all such postal articles, provided that they are fully prepaid as prescribed by section 12 and shall deliver the same to the post office at the port or place of their destination.

Gratuities to master of vessels not being contract packets for conveyance of mail bags and postal articles generally.

33. (1) The Governor may determine the rates of gratuities to be paid to masters, owners or agents of vessels, not being Government or contract packets, for the conveyance of mail bags and postal articles generally and in particular cases.

(2) Before payment is made the Postmaster General may require the master of any vessel to produce a certificate from the Post Office of destination that such articles have been duly received from him.

- (3) No gratuity shall be payable—
- (a) unless application be made for payment within twelve months of the date of despatch of such postal articles;
 - (b) if there has been unreasonable delay on the part of the master in delivering his mail at the post office of destination; or
 - (c) if the mails have been damaged in transit unless the master prove to the satisfaction of the Postmaster General that such damage was not due to any fault or lack of sufficient care on his part.
- (4) If the master of any vessel satisfies the Postmaster General that he will not return to the Colony within the twelve months prescribed by sub-section (3) (a), the Postmaster General may pay the gratuity in advance.

34. Any person who—

- (1) being employed by or on behalf of the Post Office to convey or deliver postal matter whilst so employed—
 - (a) allows any mail bag or postal article out of his possession; or
 - (b) suffers any unauthorized person to interfere with any such bag or postal article; or
 - (c) is guilty of any neglect whereby any such mail bag or postal article is endangered; or
 - (d) loiters on the road; or
 - (e) wilfully misspends or loses time; or
 - (f) is under the influence of intoxicating liquor; or
 - (g) does not convey postal articles at the speed fixed by the Postmaster General for the conveyance thereof, unless prevented by some cause beyond his control, the proof whereof lies on the person charged; or
- (2) being employed by or on behalf of the Post Office, negligently loses any postal article or negligently detains or delays, or permits the detention or delay of, any postal article,

Penalty on loitering, carelessness in delivering or handling mail bags or postal articles.

shall be liable on conviction to a fine not exceeding ten pounds.

Penalty for opening, detaining or delaying, secreting, altering or destroying.

35. (1) Any person who, being required by law or by virtue of his employment to do any act with respect to the receipt, despatch, or delivery of any postal article—

- (a) neglects or refuses to do such act; or
- (b) wilfully detains or delays, or permits the detention or delay of any such thing; or
- (c) opens, or procures or suffers to be opened, any postal article; or
- (d) fraudulently prepares, alters, secretes or destroys any register or document,

shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds or to both such fine and such imprisonment.

(2) Nothing in this section shall extend to the opening or delaying of any mail bag or postal article under the authority of this Ordinance or in obedience to the order in writing of the Governor or the Postmaster General or the order of a competent court.

Penalty for fraud in connexion with delivery of postal articles.

36. Any person who being an officer of the Post Office—

- (a) fraudulently puts any wrong official mark on a postal article;
- (b) fraudulently alters, removes or causes to disappear any official mark which is on a postal article;
- (c) being entrusted with the delivery of any postal article knowingly demands or receives any sum of money in respect of the postage or other charges thereof which is not chargeable under this Ordinance,

shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds or to both such fine and imprisonment.

Penalty for fraudulently sending unpaid postal articles.

37. Any person who, being an officer of the Post Office sends by post or puts into any mail bag any postal article upon which the postage has not been paid or charged in the prescribed manner intending thereby to defraud the Government of the postage on such postal article, shall be liable on conviction to imprisonment for a term not exceeding two years.

Penalty for money orders issued with fraudulent intent.

38. Any officer of the Post Office who issues a money order or valuable security with a fraudulent intent shall be liable on conviction to imprisonment for a term not exceeding three years.

39. Any person who, with intent to defraud—

- (1) removes from any postal article which is in course of transmission by post any stamp affixed thereon; or
- (2) removes from any stamp previously used any mark made thereon at a post office; or
- (3) knowingly uses a postage stamp which has been obliterated or defaced by a mark made thereon at a post office,

Fraudulently
removing
stamps.

is liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding fifty pounds.

On the trial of a person charged with knowingly using a postage stamp which has been obliterated or defaced by a mark made thereon at a post office, proof that the person charged is the writer of the address of anything sent by post on which the stamp is affixed shall be prima facie evidence that he is the person who used the stamp.

40. Any person who—

- (1) without the authority of the Postmaster General, the proof of which lies on the person charged, places, or maintains, or permits to be placed or maintained, or to remain in, or near, any place under his control the words "post office"; or the words "letter box", accompanied with words, letters or marks which signify or imply, or may reasonably lead the public to believe, that it is a receptacle provided by the authority of the Postmaster General for the reception of postal matter; or any words, letters or marks which signify or imply, or may reasonably lead the public to believe, that any place is a post office, or that any such receptacle is provided by the authority of the Postmaster General as aforesaid; or
- (2) without the authority of the Postmaster General, the proof of which lies on the person charged, places, or permits to be placed or to remain, on any vehicle or vessel under his control the words "royal mail", or any word, letter or mark, which signifies or implies, or may reasonably induce any person to believe, that the vehicle or vessel is used for the conveyance of mails; or

Illegally
setting up
post office or
office for sale
of stamps or
imitating post
office and
contravention
of section 11.

(3) without the licence of the Postmaster General, the proof of which lies on the person charged—

- (a) sells, or offers or exposes for sale any postage stamp; or
- (b) places, or permits to be placed or to remain, on or near his house or premises the words "licensed to sell stamps", or any word, letter or mark, which signifies or implies, or may reasonably induce any person to believe, that he is duly licensed to sell postage stamps,

is liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding six months.

Penalty for
contravention
of section 6.
Exclusive
privilege of
Postmaster
General.

41. (1) Any person who—

- (a) conveys otherwise than by post a letter within the the exclusive privilege conferred by section 6; or
- (b) performs any service incidental to conveying otherwise than by post any letter within the exclusive privilege aforesaid; or
- (c) sends or tenders or delivers, in order to be sent otherwise than by post, a letter within the exclusive privilege aforesaid; or
- (d) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post; or
- (e) carries, receives, tenders, delivers or collects letters in contravention of this Ordinance,

shall be liable on conviction to a fine not exceeding five pounds for every such letter.

(2) Any person who having already been convicted of an offence under this section is again convicted thereunder, shall on every such subsequent conviction be liable to a fine not exceeding ten pounds for every such letter or if the letters are less than ten to a fine not exceeding one hundred pounds.

Penalty for
contravention
of sections 21
and 23.
Prohibited
articles.

42. (1) Any person who in contravention of any of the provisions of this Ordinance or of any declaration made in the Post Office Guide under sections 21 and 23 sends or tenders or makes over in order to be sent by post any postal

article or thing the transmission of which by post is prohibited shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding fifty pounds or to both such fine and such imprisonment.

(2) The detention in the post office or withdrawal from transmission by post of any postal article on the ground of its having been sent in contravention of this Ordinance shall not exempt the sender from any proceeding which might have been taken if the postal article had been delivered in due course of post.

43. Any person who—

- (a) wilfully destroys or damages any receptacle provided by authority of the Postmaster General for the reception of postal articles, or any card or notice relating to the Post Office, or obliterates any letter or figure on any such thing; or
- (b) wilfully places in or against any receptacle provided by authority of the Postmaster General for the reception of postal articles, any fire or match or any explosive, dangerous, noxious or deleterious substance, or any fluid or filth,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

44. Any person who without the authority of the Postmaster General affixes or attempts to affix any placard, advertisement, notice, list, document, board, or paint, tar, or other thing to any post office shall be liable on conviction to a fine not exceeding five pounds.

45. Any person who—

- (1) knowingly and fraudulently puts into a post office anything in or upon which, or in or upon the cover of which, there is any letter, newspaper, or other thing, or any writing or mark, not allowed by law to be there placed; or
- (2) wilfully subscribes on the outside of anything sent by post a false statement of its contents; or
- (3) knowingly and fraudulently puts into a post office anything which falsely purports to be a thing falling within any exemption or privilege declared by the law relating to postal articles,

Penalty for
injuring post
office letter
box.

Defacing
post office or
letter box.

Fraudulent
evasion of
Post Office
laws.

shall be liable on conviction to a fine not exceeding twenty pounds and if the false declaration is made for the purpose of defrauding the Government, to a fine not exceeding fifty pounds.

Penalty for
detaining
mail bags or
postal articles
wrongly
delivered.

46. Any person who fraudulently retains or wilfully secretes or makes away with or keeps or detains or when required by an officer of the Post Office neglects or refuses to deliver up any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be liable on conviction to imprisonment for any term not exceeding two years and shall also be liable to a fine not exceeding one hundred pounds.

Penalty for
unlawfully
disclosing
contents of
postal articles.

47. Any person who reveals, discloses or in any way makes known the contents of any postal article opened under the authority of this Ordinance, except so far as may be necessary for the purpose of returning the same to the sender or so far as may be authorized by the Postmaster General in writing shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

Repeal.
Cap. 117.

48. The Indian Post Office Act, 1898, as applied to the Colony, and the Post Office Amendment Ordinance are hereby repealed :

Provided that all proclamations, rules, orders and notices issued under or made in virtue of the said repealed Act and/or Ordinance shall remain in force so far as they are not inconsistent with this Ordinance and, unless the contrary intention appears, until they shall have been revoked or have been repealed by proclamations, rules, orders and notices, as the case may be, issued or made under the provisions of this Ordinance.

SCHEDULE.

DECLARATION.

I,, an employee in the Post Office of the Colony of Kenya do solemnly and sincerely declare that I will not wittingly or willingly open or delay or cause or suffer to be opened or delayed, contrary to my duty, any letter or anything sent by the post which shall come into my hands or custody by reason of my employment relating to

the Post Office; that I will not embezzle or tamper with any such letter or anything sent by the Post Office as aforesaid; that I will observe the strictest secrecy in relation to all letters, telegrams, messages, communications, intelligence, business and all matters whatsoever, communicated to or done by me, or coming to my knowledge in the course of or during my employment; and that I will never at any time upon any pretence or account whatsoever without the consent of the Governor disclose, divulge or make known to any persons whatsoever, any such letters, telegrams, messages, accounts, communications, intelligence, business or matters aforesaid or the purport thereof, respectively, or anything in any matter relating thereto unless compelled so to do by a court of law or other competent tribunal, and I make this solemn declaration conscientiously intending to fulfil and obey the same.

Signature of Employee.....

Declared before me this day of, 19.....

Signature of Magistrate.....

ORDINANCE No. XIX of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

Date of assent.

[29TH MAY, 1934.]

An Ordinance to Provide for the Protection of the Diamond Industry.

Date of commencement

By Notice.

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

Short title and commencement.

1. This Ordinance may be cited as the Diamond Industry Protection Ordinance, 1934, and shall come into force upon such date as the Governor may by notice in the Gazette appoint.

Interpretation

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

“diamond” means any rough and uncut diamond, bort, or carbon;

“buy” and “sell” include barter, “buy” includes “receive as a pledge or security”, and “sell” includes “deposit as a pledge or security”;

“authorized diamond miner” means the holder of a licence to prospect for diamonds, whether on his own behalf or as an agent for another individual or for a company, body of persons or partnership, or of a claim, location or mining lease for precious stones granted under any mining legislation in force, or any person authorized in writing by the holder of such licence or lease to act on his behalf for the purposes of this Ordinance, provided that such authorization has been previously communicated to the Commissioner;

“licensed diamond dealer” means the holder of a diamond dealer's licence issued under this Ordinance;

“Commissioner” means the Commissioner of Mines appointed by the Governor, and includes any public officer authorized by the Commissioner to act on his behalf.

Unlawful possession of diamonds.

3. (1) If any diamond is found in the possession, power, or control of any person, that person shall, unless he proves that he obtained it lawfully, be guilty of an offence against

this Ordinance, and shall on conviction be liable to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Any diamond in the course of transmission through the post, either within the Colony or from the Colony to a place beyond the Colony, shall while within the Colony be deemed for the purpose of this section to be in the possession of the person who despatched the same by post.

4. No person shall pay or satisfy any debt by means of diamonds; provided that this section shall not prevent an authorized diamond miner from satisfying a debt due from him to a licenced diamond dealer by means of diamonds.

Payment of debts in diamonds.

5. (1) No person, other than an authorized diamond miner or a licensed diamond dealer, shall sell any diamond.

Restrictions on selling diamonds.

(2) No authorized diamond miner shall sell any diamond which is not lawfully won by him or by some other authorized diamond miner, for whom he is authorized to act, under the authority of a prospecting licence or duly registered claim, location or mining lease.

(3) No licensed diamond dealer shall sell any diamond except on behalf of an authorized diamond miner or another licensed diamond dealer or unless the diamond has been obtained from an authorized diamond miner or another licensed diamond dealer.

(4) No authorized diamond miner or licensed diamond dealer shall sell any diamond to any person residing in the Colony other than a licensed diamond dealer.

(5) Any person contravening any of the provisions of this section shall be liable to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

6. (1) No person, other than a licensed diamond dealer, shall buy any diamond.

Restrictions on buying diamonds.

(2) No licensed diamond dealer shall buy any diamond except from an authorized diamond miner or another licensed diamond dealer.

(3) Any person contravening any of the provisions of this section shall be liable to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

No buying or selling at night or on Sundays.

Exceptions of transactions approved by the Commissioner.

Diamonds to be exported only under permit and by registered post.

Issue of diamond dealer's licence.

Books to be kept by licensed diamond dealers.

7. No person shall buy or sell any diamond on Sunday or between the hours of 6 p.m. and 6 a.m. on any other day.

8. Sections 4, 5, 6, and 7 of this Ordinance do not apply to transactions which have been previously approved in writing by the Commissioner if all conditions attached to such approval are observed.

9. No diamond shall be exported from the Colony except by registered post under permit from the Commissioner to a valuer approved of by the Commissioner.

10. (1) A diamond dealer's licence in the prescribed form may be issued by the Commissioner and shall expire on the following thirty-first day of December.

(2) The fee for a licence shall be five pounds, or if issued after the end of June, three pounds.

(3) The Commissioner may, without assigning a reason, refuse to issue a licence.

(4) The Commissioner may revoke a licence—

(a) upon the conviction of the holder thereof for an offence under this Ordinance;

(b) for any other reason with the approval of the Governor in Council;

Provided that on revocation the Commissioner may refund such part of the fee as he thinks just.

(5) A licensed diamond dealer shall not buy, sell or store any diamond except on the premises specified in his licence.

(6) Every licensed diamond dealer shall have affixed outside his premises a sign with his name and the words "Licensed Diamond Dealer" in a conspicuous place, and in legible lettering in the English language, and any such dealer contravening this sub-section shall be liable to a fine not exceeding twenty-five pounds for a first offence and two hundred and fifty pounds for a subsequent offence.

11. Every licensed diamond dealer shall keep a book in which he shall enter or cause to be entered in the English language such particulars of every transaction as may be prescribed, and shall at all times produce such book and his stock for inspection by the Commissioner and shall render monthly to the Commissioner a return of such transactions in such form as may be prescribed.

12. (1) Every licensed diamond dealer shall be liable for the due payment of all royalties which may be due on any diamonds bought, sold, received, or exported by him, and, if so required by the Commissioner, shall give security to the satisfaction of the Commissioner for the due payment of all such royalties.

Payment of royalties by licensed diamond dealers.

(2) Subject to any agreement to the contrary, a licensed diamond dealer who pays any royalty on any diamonds may recover or retain the amount from the person on whose behalf he sold or exported them or from whom he received them.

13. (1) Any diamonds found without an apparent owner may be seized by any police officer or by the Commissioner and shall forthwith be taken before a subordinate court of the first class which shall advertise the finding in one issue of the Gazette.

Forfeiture of diamond without an apparent owner.

(2) Unless within three months from the date of the Gazette in which the advertisement appears any person proves to the satisfaction of the court a title to the diamonds and that he was not concerned in any offence in connection with them, the court shall declare them to be forfeited to His Majesty.

14. (1) A magistrate who has reason to suspect that any diamond with respect to which an offence against this Ordinance has been committed is concealed in any place may issue a warrant authorizing any police officer with his assistants at any time within one month from the date of the warrant to enter and search that place and all buildings and things therein, using such force as may be necessary, and to seize any diamond and arrest any person found therein.

Search warrants.

(2) Any person arrested and any diamond seized under the authority of such a warrant shall, as soon as possible, be brought before a subordinate court to be dealt with according to law.

15. (1) Any person employed as a clerk or servant who shall steal any diamond the property of or in the lawful possession of his employer or shall conceal or retain any such diamond with intent to convert the same to his own use shall be liable on conviction to imprisonment for a term not exceeding ten years, or to a fine not exceeding one thousand pounds or to both such fine and imprisonment; and any person inducing any other person employed as a clerk or servant to commit any such offence shall be liable to the same punishment.

Stealing by servants.

(2) Any diamond found in the possession of any person who is at the time when the diamond is found in his possession, or was within three months previously, employed as a clerk or servant by any licensed diamond dealer, or authorized diamond miner, shall unless the contrary be proved, be deemed to be the property of such employer and may be seized and taken possession of by such employer.

Punishment
for offences.

16. Any person who contravenes any provision of this Ordinance for the contravention of which no penalty is specially imposed shall be liable to a fine not exceeding one thousand pounds and on a second or any subsequent conviction either to such fine or to imprisonment for any term not exceeding two years or to both such fine and imprisonment, and the court may, if it thinks fit, declare that any diamond with respect to which the offence was committed shall be forfeited to His Majesty if there be no person lawfully entitled thereto.

Attempts and
abetment.

17. Any person who attempts to commit or abets an offence against this Ordinance shall himself be guilty of an offence against this Ordinance, and shall be liable to the same punishment as for the offence attempted or abetted.

Burden of
proof as to
diamond.

18. If, for any purpose under this Ordinance, the question is in issue as to whether any article is or is not a diamond, the burden of proof that such article is not a diamond shall be on the person who alleges that it is not a diamond; and, in the absence of such proof, such article shall be deemed to be a diamond.

Power of
arrest without
warrant.

19. A police officer may, without warrant, arrest any person who has been concerned in any of the offences described in sections 3, 4, 5, 6, 9, and 15, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

Power to
detain
diamonds sent
by post.

20. (1) It shall be lawful for any police officer of or above the rank of Assistant Superintendent whenever he shall have good cause to believe that any article is being despatched through the Post Office containing diamonds in connection with which an offence against this Ordinance has been committed, to stop or cause to be stopped such article as aforesaid at any post office within the Colony either during transit or otherwise.

(2) If the person who shall have despatched such article can be ascertained and is in the Colony such police officer shall thereupon by a notice in writing personally served upon such person require him to attend, either personally or by an agent duly authorized by him in writing, at the post office at which such article is detained and at a time which shall be specified, and which shall allow reasonable opportunity for his attendance or that of his agent, in order that he or his agent may be present at the opening and examination of such article. At the time and place specified in the notice aforesaid such police officer shall open the article in the presence of the postmaster and, if such person or his agent shall attend, in the presence of such person or the agent, and shall, after examination, either release such article for transmission through the post or require the same to be detained pending an order of the court for the disposal of the same.

(3) If the person who shall have despatched such article cannot be ascertained or is not in the Colony such police officer may at any time open such article in the post office at which it is detained and in the presence of the postmaster and may examine the same and shall, after examination, either release such article for transmission through the post or require the same to be detained pending an order of the court for the disposal of the same.

21. Any person who finds a diamond on any land, not held by him under lease, claim, location or prospecting licence, shall forthwith report the discovery to the Commissioner and shall deliver such diamond to the Commissioner who shall deliver it to the person lawfully entitled thereto.

Persons finding diamonds to report forthwith to Commissioner.

22. (1) The Governor in Council may make regulations prescribing anything which this Ordinance requires to be prescribed and generally for carrying this Ordinance into effect.

Power to Governor in Council to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may :—

- (a) empower the holder of a claim, location or mining lease to demarcate by such means as may be prescribed, any part of the area, on which diamond mining operations are in progress; and may prohibit or restrict any persons from entering thereon; provided that the area so demarcated shall not include any dwelling house, or the ground lawfully occupied therewith, unless the occupiers consent shall have been obtained;

- (b) prohibit or restrict the entry of persons into any mining village. A mining village in this section means a village which is situated on a mining lease and the whole or the greater part of which has been erected by the holder of such lease or his predecessors in title;
 - (c) confer on such persons as may be specified the power of searching persons, buildings and articles within a demarcated part of a claim, location or mining lease and within a mining village;
 - (d) provide for the registration of diamonds.
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ORDINANCE No. XX of 1934

Assented to in His Majesty's name this twenty-ninth day of May, 1934.

J. BYRNE,
Governor.

[29TH MAY, 1934.] Date of assent.

An Ordinance to Amend the Companies Ordinance, 1933.

29th May, 1934

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 Companies (Amendment) Ordinance, 1934, and shall be read as one with the Companies Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

Short title.

No. 28 of 1933.

2. Section 79 of the Principal Ordinance is hereby amended by repealing sub-section (5) thereof.

Amendment of section 79 of the Principal Ordinance.

3. Section 146 of the Principal Ordinance is hereby amended by repealing sub-section (1) thereof and by substituting therefor the following :—

Particulars with respect to directors in trade catalogues, circulars, etc.

“146. (1) Every company to which this section applies shall, in all trade catalogues, trade circulars, show-cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, state in legible roman letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars :—

- (a) his present Christian names or the initials thereof, and present surname ;
- (b) any former Christian names and surnames ;
- (c) his nationality, if not British ;
- (d) his nationality of origin if his nationality is not the nationality of origin :

Provided that if special circumstances exist which render it, in the opinion of the registrar, expedient that such an exemption should be granted, the registrar may grant, subject to such conditions as he may specify, exemption from the obligations imposed by this sub-section.

Any person aggrieved by a refusal to grant an exemption under this sub-section may appeal to a judge of the Supreme Court sitting in chambers."

the person entitled to such subsequent mortgage or incumbrance may recover in such suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid although such time may have exceeded the said term of six years.

5. (1) All suits for the recovery of any chattel or movable thing, or the possession thereof, all suits founded upon any simple contract and all personal suits whatsoever shall and may, unless otherwise specifically provided for in this Ordinance, be commenced and sued within six years next after the cause of such suits and not after.

Limitation of other personal suits.

(2) All suits for damage or injury to persons or property, all suits of assault, battery, wounding or imprisonment, all suits of libel and slander, and all suits of tort, shall and may, unless otherwise specifically provided for in this Ordinance, be commenced and sued within two years next after the cause of such suits and not after.

6. All suits of account or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such suits, and no claim in respect of a matter which arose more than six years before the commencement of such suit shall be enforceable by suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such suit.

Limitation of suits for merchant's accounts.

7. If any acknowledgment shall be made either by writing signed by the party liable upon any simple contract, or his agent, or by part payment or part satisfaction on account of any principal or interest being due thereon, it shall and may be lawful for the person entitled to bring such suit to bring his suit for the money remaining unpaid or so acknowledged to be due, within six years after such acknowledgment, or part payment, or part satisfaction, as aforesaid, or the last of such acknowledgments, part payments, or part satisfactions, if more than one :

Limitation of suits where acknowledgment or part payment.

Provided that where there are two or more co-contractors or co-debtors, whether liable jointly only or jointly and severally, no such co-contractor or co-debtor shall be chargeable by reason only of any such part payment, part-satisfaction or acknowledgment made by any other of such co-contractors or co-debtors, but the period of limitation shall be deemed to be

renewed only as against the co-contractor or co-debtor making such part payment, part satisfaction or acknowledgment.

Limitation of suits on any Act, Order in Council, or Ordinance.

8. All suits for penalties, damages or sums of money given to the party aggrieved by any Act, Order in Council or Ordinance shall be commenced and sued within two years after the cause of such suits, but not after, provided that nothing herein contained shall extend to any suit given by any Act, Order in Council or Ordinance, where the time for bringing such suit is or shall be by any such Act, Order in Council or Ordinance specially limited.

Remedy for minors and of unsound mind.

9. If any person who is or shall be entitled to any suit for money secured by mortgage or judgment or charged upon or payable out of and being a lien upon any land or rent, or for the recovery of any legacy or share of any inheritance, or for an account as between partners in land or commerce, or between co-heirs, or as against any executor, guardian, trustee, curator, administrator or agent, or to any suit for the recovery of any chattel or movable thing, or the possession thereof, or any suit founded upon any simple contract, or suits for damage or injury to persons or property, or to any personal suits or suits for merchant's accounts or to suits of libel and slander, and assault, battery, wounding and imprisonment, or suits for penalties as are in this Part hereinbefore mentioned, be or shall be, at the time of any such cause of action given or accrued, fallen or come, a minor or a person of unsound mind then such person shall be at liberty to bring the same suit within the times hereinafter limited, and not after; that is to say, as to the said suits for money secured by mortgage or judgment or charged upon or payable out of and being a lien upon any land or rent, or for the recovery of any legacy or share of any inheritance or intestate estate, or for an account as between partners in land or commerce, or between co-heirs or as against any executor, guardian, trustee, curator, administrator or agent within twelve years after, and as to the said suits for the recovery of any chattel or the possession thereof, or founded upon any simple contract, or the said personal suits or suits for merchant's accounts, within six years after, and as to the said suits for damage or injury to persons or property and of libel, slander, assault, battery, wounding, imprisonment, penalties and all suits of tort unless otherwise specifically provided for in this Ordinance, within two years after such person attains the age of majority or becomes of sound mind, as the case may be.

PART II.

IMMOVABLE PROPERTY LIMITATION.

10. No person shall make an entry or distress, or bring a suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such suit, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such suit shall have first accrued to the person making or bringing the same.

No land or rent to be recovered but within twelve years after right of action accrued.

11. The right to make an entry or distress, or bring a suit to recover any land or rent, shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say—

When the right shall be deemed to have accrued.

- (1) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;
- (2) when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death;
- (3) when the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the

receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument;

- (4) when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession;
- (5) when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

Entry or distress on breach of condition.

12. When any right to make an entry or distress, or to bring a suit to recover any land or rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall have not been recovered by virtue of such right, the right to make an entry or distress or bring a suit to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

Provision for case of future estates.

13. A right to make an entry or distress, or to bring a suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation

of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent, but if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within twelve years next after the time when the right to make an entry or distress, or to bring suit, for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession whichever of those two periods shall be the longer; and if the right of any such person to make such entry or distress, or to bring any such suit, shall have been barred under this Ordinance, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring a suit, for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such suit, to recover such land or rent.

14. For the purposes of this Part, an administrator claiming the estate or interest of the deceased person of whose estate and effects he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

Rights of
administrator.

15. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring a suit to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy

Tenant at
will.

shall be deemed to have determined or at the last time when any rent payable in respect of such tenancy shall have been received; whichever shall last happen :

Provided always that no mortgagor or cestui que trust shall be deemed to be a tenant at will, within the meaning of this section, to his mortgagee or trustee.

Tenant from year to year.

16. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring a suit to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received, whichever shall last happen.

Accrual of right where rent amounting to Sh. 20 or upwards reserved by a lease in writing shall have been wrongfully claimed.

17. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent subject to such lease, or of the person through whom he claims, to make an entry or distress, or to bring a suit after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

Effect of entry.

18. No person shall be deemed to have been in possession of any land within the meaning of this Part merely by reason of having made an entry thereon; and no continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing a suit.

Limitation of suits by mortgagees.

19. It shall and may be lawful for any person entitled to or claiming under any mortgage of land whereby the legal estate in the land comprised in the mortgage shall be con-

veyed, to make an entry or bring a suit to recover such land at any time within twelve years next after the last payment of any part of the principal or interest money secured by such mortgage, although more than twelve years may have elapsed since the time at which the right to make such entry or bring such suit shall have first accrued.

20. (1) When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any suit to redeem the mortgage but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within twelve years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

Mortgagor to be barred at end of twelve years from the time when the mortgagee took possession or from the last written acknowledgment.

(2) Where there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

(3) Where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent.

(4) Where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Possession of one co-heir not to be the possession of others.

21. When any one or more of several persons entitled to any land or rent as co-heirs, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

Effect of acknowledgment of title.

22. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Ordinance, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring a suit to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

Persons under disability to be allowed six years after disability ceases.

23. If at the time at which the right of any person to make an entry or distress, or bring a suit to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned; that is to say, shall have been a minor or a person of unsound mind, then such person or the person claiming

through him may, notwithstanding that the period of twelve or six years (as the case may be) hereinbefore limited shall have expired, make an entry or distress, or bring a suit to recover such land or rent, at any time within six years next after the time at which the person to whom such right shall have first accrued as aforesaid shall have ceased to be under any such disability, or shall have died, whichever shall have first happened.

24. No entry, distress or suit shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring a suit to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

But no suit shall be brought beyond thirty years after right accrued.

25. When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring a suit to recover any land or rent, shall have first accrued, and shall die without having ceased to be under any such disability, no time to make an entry or distress, or to bring a suit to recover such land or such rent, beyond the said period of twelve years next after the right of such person to make an entry or distress, or to bring a suit to recover such land or rent, shall have first accrued, or the said period of six years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

No further time to be allowed for a succession of disabilities.

26. When the right of any person to make an entry or distress, or to bring a suit to recover any land or rent to which he may have been entitled for an estate or interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall, at any time during the said period, have been entitled to any other estate, interest, right, or possibility in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or suit shall be made or brought by such person, or any person claiming through

Barring of successive rights.

him, to recover such land or rent, in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

In case of express trust, the right not to accrue until conveyance.

27. (1) When any land or rent shall be vested in a trustee upon any express trust, the right of the cestui que trust, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Ordinance, at, and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

(2) (i) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply—

(a) all rights and privileges conferred by any law of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such suit or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him;

(b) if the suit or other proceeding is brought to recover money or other property, and is one to which no existing law of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such suit or other proceeding in the like manner and to the like extent as if the claim had been against him in a suit of debt for money had and received but so nevertheless that the law shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

(ii) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such suit or other proceeding and this section had been pleaded.

(iii) This section shall apply only to suits or other proceedings commenced after the coming into operation of this Ordinance, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing law of limitation.

(3) After the commencement of this Ordinance no suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

28. In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered :

In case of fraud, no time shall run while fraud concealed.

Provided that nothing in this section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any bona fide purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

29. At the determination of the period limited by this Part to any person for making an entry or distress, or bringing any suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, or suit respectively might have been made or brought within such period shall be extinguished.

Extinguishment of right.

Receipt of
rent to be
deemed receipt
of profits.

30. The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Part.

Rights of
action by
and against
personal
representative.

31. (1) For any debt (including arrears of rent) due to a deceased person, and for any injury to or right in respect of his personal estate in his lifetime, his personal representative shall have the same right of action as the deceased would have had if alive.

(2) The personal representative of a deceased person may maintain for any injury committed to the immovable property of the deceased within six months before his death any suit which the deceased could have maintained, but the suit must be brought within one year after his death, and any damages recovered in the suit shall be part of the personal estate of the deceased.

(3) A personal representative may distrain for arrears of a rent charge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rent charge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(4) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living.

Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

- (a) within six months after the termination of the lease or tenancy;
- (b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

The law for the time being in force relating to distress for rent shall apply to any distress made pursuant to this sub-section.

(5) A suit may be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death to another person in respect of his property, movable or immovable, but

the suits shall be brought within six months after the personal representative of the deceased has taken out representation.

Any damages recovered in the proceedings shall be payable as a simple contract debt incurred by the deceased.

(6) A suit may be maintained against the personal representative of a deceased person for any breach of contract or breach of trust committed by the deceased subject to the same periods of limitation as would have applied had the deceased been living.

PART III.

GENERAL AND SUPPLEMENTARY.

32. All instruments shall, for the purposes of this Ordinance, be deemed to be made with reference to the British calendar. Computation of time mentioned in instrument.

33. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from the Colony shall not be excluded. Time of defendant's absence from the Colony not to be excluded.

34. Where the period of limitation prescribed for any suit, or application expires on a day when the Court is closed, the suit or application may be instituted, preferred or made on the day that the Court re-opens. Where court is closed when period expires.

35. Nothing in this Ordinance contained shall be deemed to interfere with any rule or jurisdiction of any Court of Equity in refusing relief on the grounds of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Ordinance. Saving the jurisdiction of Equity.

36. The provisions of this Ordinance shall apply, so far as may be, to debts alleged by way of set-off or counter-claim. Set-off and counter-claim.

37. (1) Suits instituted in the Colony on contracts entered into in a foreign country are subject to the rules of limitation contained in this Ordinance. Suits on foreign contracts.

(2) No foreign law of limitation shall be a defence to a suit instituted in the Colony on a contract entered into in a foreign country, unless the foreign law has extinguished the contract during the period prescribed by such foreign law.

- Savings.** **38.** (1) Nothing in this Ordinance shall—
- (a) affect the provisions of section 25 of the Indian Contract Act, 1872, as applied to the Colony;
 - (b) affect or alter any period of limitation specially prescribed for any suit or application by any Ordinance or law now or hereafter in force in the Colony;
- Cap. 170.** (c) apply to suits under the Divorce Ordinance;
- (d) in a suit where the period of limitation prescribed by this Ordinance is longer than the period of limitation prescribed by the Indian Limitation Act, 1877, as applied to the Colony, revive a suit which, on the date of the coming into force of this Ordinance, would have been barred under the said Indian Limitation Act.
- Provisions for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877.** **39.** Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Ordinance is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, as applied to the Colony, may be instituted within the period of two years next after the commencement of this Ordinance, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.
- Limitation must be pleaded specifically.** **40.** Notwithstanding anything contained in this Ordinance or in any law or Ordinance now or hereafter in force in the Colony, no suit, application or proceeding shall be rejected or dismissed on the grounds that such suit, application or proceeding is barred by the provisions of this Ordinance or by the provisions of any other law or Ordinance now or hereafter in force in the Colony, unless such provision or provisions is or are specifically pleaded.
- Repeal.** **41.** The Indian Limitation Act, 1877, as applied to the Colony save in so far as it relates to prescription is hereby repealed :
- Provided that where in the said Indian Limitation Act any act, matter or thing is required to be done within a specified period, and a period of limitation in respect of any such act, matter or thing is not provided for in this Ordinance or in any other law or Ordinance now or hereafter in force in

the Colony then, notwithstanding the provisions of this section, the period of limitation provided for in the said Indian Limitation Act in respect of the said act, matter or thing shall remain in full force and effect.

ORDINANCE No. XXII of 1934

Assented to in His Majesty's name this second day of June, 1934.

*Amended by Ord. 10/35 116/51
25/36*

J. BYRNE,
Governor.

Date of assent.

*20/44
12/55*

[2ND JUNE, 1934.]

An Ordinance relating to Juveniles.

Date of commencement

Oct 1934

By Proclamation

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

Short title and commencement.

Procl. 9/34

Interpretation.

1. This Ordinance may be cited as the Juveniles Ordinance, 1934, and shall come into force on such day as the Governor may by proclamation appoint.

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

Substituted by Ord. 46/51
“approved school” means a school established under section 26, or a school declared by the Governor under that section to be an approved school.

“child” means a person under the age of fourteen years.

“court” means a court of competent jurisdiction, but does not include a tribunal established under the Native Tribunal Ordinance, 1930.

“guardian” in relation to a child or young person includes any person who, in the opinion of the court having cognizance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person.

“juvenile” means any child or young person lawfully detained in an approved school.

“police officer” means any officer of police of or above the rank of Assistant Inspector.

“probation officer” means a person appointed under this Ordinance by the Governor or by the court to be a probation officer.

“young person” means a person who is fourteen years of age or upwards and under the age of eighteen years.

Juvenile courts.

3. (1) A court when hearing charges against children or young persons shall, unless the child or young person is charged jointly with any other person not being a child or

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er section 26
vornor under

No. 39 of 1930

young person, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held and a court so sitting is in this Ordinance referred to as a juvenile court.

(2) Where in the course of any proceedings in a juvenile court it appears to the court that the person charged or to whom the proceedings relate is of the age of eighteen years or upwards, or where in the course of any proceedings in any court other than a juvenile court it appears that the person charged or to whom the proceedings relate is under the age of eighteen years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case.

(3) Provision shall be made for preventing persons apparently under the age of eighteen years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from association with adults charged with or convicted of any offence other than an offence with which the person apparently under the age of eighteen years is jointly charged or convicted.

(4) In a juvenile court no person other than the members and officers of the court and the parties to the case, their advocates and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend :

Provided that bona fide representatives of a newspaper or news agency shall not be excluded, except by special order of the court :

Provided that no person shall publish the name, address, school, photograph, or anything likely to lead to the identification of the child or young person before the juvenile court, save with the permission of the court or in so far as required by the provisions of this Ordinance. Any person who acts in contravention of the provisions of this proviso shall be liable to a fine not exceeding fifty pounds.

4. Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing

**Presumption
and
determination
of age.**

of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Ordinance, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it is of the age of eighteen years or upwards, that person shall for the purposes of this Ordinance be deemed not to be a child or young person.

Bail of children and young persons arrested.

5. Where a person apparently under the age of eighteen years is apprehended with or without warrant and cannot be brought forthwith before a court, the police or administrative officer to whom such person is brought shall inquire into the case, and may in any case, and

- (a) unless the charge is one of murder or manslaughter or other grave crime; or
- (b) unless it is necessary in the interest of such person to remove him from the association with any undesirable person; or
- (c) unless such officer has reason to believe that the release of such person would defeat the ends of justice,

shall release such person on a recognizance, with or without sureties, for such amount as will, in the opinion of such officer, secure the attendance of such person upon the hearing of the charge, being entered into by him or by his parent or guardian, or other responsible person.

Custody of children and young persons not discharged on bail after arrest.

6. Where a person apparently under the age of eighteen years having been apprehended is not so released as aforesaid, the police or administrative officer to whom such person is brought shall cause him to be detained in a remand home until he can be brought before a court, unless such officer certifies—

- (a) that it is impracticable to do so; or
- (b) that he is of so unruly or depraved a character that he cannot be safely so detained; or
- (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him,

and the certificate shall be produced to the court before which the person is brought.

7. (1) A court on remanding or committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody in a remand home named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due course of law :

Remand or committal to custody in a remand home.

Provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court acting in or for the place in or for which the court which made the order acted, and if it is revoked the young person may be committed to prison.

8. (a) Where a child or young person is brought before a juvenile court for any offence it shall be the duty of the court as soon as possible to explain to him in simple language the substance of the alleged offence.

Procedure in juvenile court.

(b) Where a child is brought before a juvenile court for any offence other than murder or manslaughter the case shall be finally disposed of in such court, and it shall not be necessary to ask the parent whether he consents that the child shall be dealt with in the juvenile court.

(c) Where a young person is brought before a juvenile court for an offence triable only by the Supreme Court other than murder or manslaughter and the court becomes satisfied at any time during the hearing of the case that it is expedient to deal with it summarily, the court shall put to the young person the following or a similar question, telling him that he may consult his parent or guardian ~~if present in court~~ before replying—

“Do you wish to be tried by this court or by the Supreme Court?”

and the court shall explain to the young person and to his parent or guardian ~~if present in court~~ the meaning of being so tried and the place where the trial would be held.

(d) After explaining the substance of the alleged offence the court shall ask the child or the young person (except in cases where the young person does not wish to be tried in the juvenile court) whether he admits the offence.

(e) If the child or young person does not admit the offence the court shall then hear the evidence of the witnesses in support thereof. At the close of the evidence in chief of each such witness the magistrate shall ask the child or young person, ~~or, if he see fit,~~ the child's parent or guardian, whether he wishes to put any questions to the witness.

If the child or young person instead of asking questions wishes to make a statement he shall be allowed to do so. It shall be the duty of the court to put to the witnesses such questions as appear to be necessary. The court may put to the child or young person such questions as may be necessary to explain anything in the statement of the child or young person.

(f) If it appears to the court that a prima facie case is made out, the evidence of any witnesses for the defence shall be heard, and the child or young person shall be allowed to give evidence or to make any statement.

(g) If the child or young person admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him the court shall obtain such information as to his general conduct, home surroundings, school record, and medical history, as may enable it to deal with the case in the best interests of the child or young person, and may put to him any question arising out of such information. For the purpose of obtaining such information or for special medical examination or observation the court may from time to time remand the child or young person on bail, ~~or to a place of detention.~~

(h) If the child or young person admits the offence or the court is satisfied that it is proved, and the court decides that a remand is necessary for purposes of enquiry or observation, the court may cause an entry to be made in the court register or case file that the charge is proved and that the child or young person has been remanded. The court before which a child or young person so remanded is brought may without further proof of the commission of the offence make

any order in respect of the child or young person which could have been made by the court which so remanded the child or young person.

9. Where a child or young person is charged with any offence, the court may in its discretion require the attendance of his parent or guardian and may make such orders as are necessary for the purpose.

Attendance at court of parent of child or young person charged with an offence, etc.

10. ~~Every court in dealing with a child or young person~~ who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training as hereinafter provided.

General considerations.

11. (1) The Governor may by notice in the Gazette appoint a fit and proper person or persons of either sex and either by name or as holding any public office for the time being to be a probation officer or officers for any area, and may from time to time appoint a deputy probation officer for such area to act in the absence or during the illness or incapacity of the probation officer, and may appoint an assistant probation officer to perform under the direction of the probation officer all or any of the duties of a probation officer in any portion of such area.

Probation officers.

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A probation officer when acting under a probation order shall be subject to the control of the courts for the area for which he is appointed.

(2) Where a child or young person is charged with any offence other than murder or manslaughter and the court is satisfied that the charge is proved, the court may make an order discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called upon at any time during such period, not exceeding three years, as may be specified in the order. A recognizance entered into under this section shall, if the court so order, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in

Probation orders.

the order and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognizance is in this Ordinance referred to as a probation order.

Who to be named as probation officer.

- (3) The person named in any probation order shall be—
- (a) a probation officer appointed by the Governor for the area in or for which the court acts, or
 - (b) if the court considers it expedient on account of the place of residence of the offender, or for any other special reason, a probation officer appointed by the Governor for some other area, or
 - (c) if the court considers that the special circumstances of the case render it desirable, or if no person has been appointed as a probation officer, a person who has not been appointed a probation officer for any area.

(4) The person named in a probation order may at any time be relieved of his duties, and, in any such case or in case of the death of the person so named, another person may be substituted by the court before which the offender is bound by his recognizance to appear for conviction or sentence.

Duties of probation officers.

- (5) It shall be the duty of a probation officer, subject to the directions of the court—
- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;
 - (b) to see that he observes the conditions of his recognizance;
 - (c) to report to the court as to his behaviour;
 - (d) to advise, assist, and befriend him, and, when necessary, to endeavour to find him suitable employment;
 - (e) to give such assistance in the carrying out of the provisions of this Ordinance as may be prescribed.

Power to vary conditions of release.

(6) The court before which any person is bound by his recognizance under this Ordinance to appear for conviction or sentence may, upon the application of the probation officer, and after notice to the offender, vary the conditions of the recognizance and may, on being satisfied that the conduct of that person has been such as to make it unnecessary that he should remain longer under supervision, discharge the recognizance.

(7) (a) If the court before which an offender is bound by his recognizance to appear for conviction or sentence, or any court, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons.

Provision
in case of
offender
failing to
observe
conditions
of release.

(b) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognizance to appear for conviction or sentence, be brought before a court.

(c) The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court.

(d) A court, before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without any further proof of his guilt, deal with him as for the original offence.

(8) Where an order under this section is made by a court the order shall, for the purpose of revesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connexion with such restitution or delivery, have the like effect as a conviction.

12. (1) No child shall be sentenced to imprisonment or to detention in a detention camp.

Restric-
tions on
punishment
of children
and young
persons.

(2) A court shall not order a child under the age of ten years to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, the court is satisfied that he cannot suitably be dealt with otherwise.

(3) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a remand home, approved school, or otherwise.

(4) A young person sentenced to imprisonment shall not be allowed to associate with adult prisoners.

Power to order parent to pay fine, etc., instead of child or young person.

STET.

13. (1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where a court thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6) A parent or guardian may appeal against an order under this section to the Supreme Court.

Detention in the case of certain crimes committed by children or young persons.

14. Notwithstanding anything contained in this Ordinance to the contrary, where a child, or a young person who at the date of the commission of the offence is under sixteen years of age, is convicted of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily

harm, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence is passed the child or young person shall, during that period, notwithstanding anything in the other provisions of this Ordinance, be liable to be detained in such place and on such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

15. Where a child or young person is convicted of an offence punishable, in the case of an adult, with imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damage, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may order that he be committed to custody in a remand home for a period not exceeding one month.

Committing child or young person to a remand home.

16. (1) Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Ordinance or otherwise enabling the court to deal with the case, the case should be dealt with, namely, ~~whether—~~

Methods of dealing with offenders.

Ord 20/44 p. 54 sec 2.

- (a) by dismissing the charge; ~~or~~
- (b) by discharging the offender on his entering into a recognizance; ~~or~~
- (c) by so discharging the offender and placing him under the supervision of a probation officer; ~~or~~
- (d) by committing the offender to the care of a relative or other fit person; ~~or~~
- (e) by sending the offender to an approved school; ~~or~~
- (f) by ordering the offender to be whipped; ~~or~~
- (g) by ordering the offender to pay a fine, damages, or costs; ~~or~~
- (h) by ordering the parent or guardian of the offender to pay a fine, damages, or costs; ~~or~~
- (i) by ordering the parent or guardian of the offender to give security for his good behaviour; ~~or~~
- (j) by committing the offender to custody in a remand home; ~~or~~
- (k) where the offender is a young person, by sentencing him to imprisonment; ~~or~~
- (l) by dealing with the case in any other manner in which it may be legally dealt with.

(2) Nothing in this section shall be construed as authorizing the court to deal with any case in any manner in which it could not deal with the case apart from this section :

Provided that whenever a child or young person is convicted of an offence for which, but for the provisions of this Ordinance a sentence of imprisonment would have been passed, the court by which such child or young person is convicted may, instead of passing such sentence of imprisonment, direct that he be sent to an approved school for a period which shall not be less than three or more than seven years.

(3) Added by Sec. 2 of Ord No 20/44 p. 54.

Establishment
of remand
homes.

17. (1) Subject as hereinafter provided it shall be the duty of every district commissioner to establish within the district under his jurisdiction a remand home :

Provided that nothing shall prevent the same remand home being provided for two or more districts, either in the interests of economy or for convenience of administration.

(2) It shall be lawful for the authority or persons responsible for the management of any institution other than a prison whether supported out of public funds or by voluntary contributions, but, subject in the case of an institution supported out of public funds, to the consent of the Governor, to agree to the use of the institution or any part thereof as a remand home on such terms as may be agreed upon between them and the Governor.

(3) A child or young person who may lawfully be remanded in custody to any place situated within a district may be so remanded to any remand home, wherever situate, which is provided under this section for that district.

(4) In selecting the remand home to which a child or young person is to be committed the court or police officer shall have regard, where practicable, to the religious persuasion of the child or young person.

Provisions
as to custody
of children
and young
persons in
remand
homes.

18. (1) The order or judgment in pursuance of which a child or young person is committed to custody in a remand home shall be delivered with the child or young person to the person in charge of such home and shall be a sufficient authority for his detention in that place in accordance with the tenor thereof.

G.N. 27/35 p. 9.

(2) A child or young person whilst so detained and whilst being conveyed to and from a remand home shall be deemed to be in legal custody and if he escapes may be apprehended without warrant and brought back to the remand home in which he was detained.

(3) The Governor shall cause remand homes to be inspected, and may make rules as to the places to be used as remand homes, and as to their inspection, and as to the classification, treatment, employment, and control of children and young persons detained in custody in a remand home, and for the children and young persons whilst so detained being visited from time to time by persons appointed in accordance with those rules.

Inspection of
and rules in
regard to
remand
homes.

(4) Any person who knowingly assists or induces a child or young person to escape from a remand home or knowingly harbours or conceals a child or young person who has so escaped, or prevents him from returning, shall on conviction be liable to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.

10. (1) If it appears to a court on information on oath laid by any person who, in the opinion of the court, is acting in the interests of a child or a young person under sixteen years of age, that there is a reasonable cause to suspect—

Warrant to
search for or
remove a
child or young
person.

(a) that the child or young person has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the court, in a manner likely to cause him unnecessary suffering, or injury to health; or

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Repealed

(b) that any offence mentioned in the Schedule to this Ordinance has been or is being committed in respect of the child or young person,

the court may issue a warrant authorizing any police officer named therein to search for the child or young person, and, if it is found that he has been or is being assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, until he can be brought before a juvenile court, or authorizing any police officer to remove him with or without search to a place of safety and detain him there until he can be brought before a juvenile court.

(2) When such child or young person is brought before a juvenile court, such court may deal with such child or young person as if such child or young person had been brought before the court under section 20 of this Ordinance.

(3) A court issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child or young person to be apprehended and brought before it, and proceedings to be taken against him according to law.

(4) Any police officer authorized by warrant under this section to search for any child or young person, or to remove any child or young person with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

(5) Every warrant issued under this section shall be addressed to and executed by a police officer, who shall be accompanied by the person laying the information, if that person so desires, unless the court by which the warrant is issued otherwise directs, and may also, if the court by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(6) It shall not be necessary in any information or warrant under this section to name the child or young person.

(7) For the purposes of this section the expression "police officer", in so far as the native reserves are concerned, includes a tribal policeman appointed under the provisions of the Tribal Police Ordinance, 1929.

No. 10 of 1929.

Children
liable to be
committed
to care of
relative, etc.

20. (1) Any authorized person may bring before a juvenile court any person apparently under the age of fourteen years who—

- (a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street, premises, or place for the purpose of so begging or receiving alms; or
- (b) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship; or

- (c) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing imprisonment; or
- (d) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
- (e) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section 148 of the Penal Code in respect of any of his daughters, whether legitimate or illegitimate; or
- (f) frequents the company of any reputed thief, or common or reputed prostitute; or
- (g) is being persistently ill-treated or neglected by his parent; or
- (h) is lodging or residing in a house or the part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child,

No. 10 of 1930

and the court before which a person is brought as coming within one of those descriptions, if satisfied on enquiry of that fact, may order the child to be taken out of the custody, charge, or care of any person, and to be committed to the care of a relative of the child or some other fit person or to a Class I approved school or an institution named by the court (such relative or other person or institution being willing to undertake such care), until the child attains the age of eighteen years, or for any shorter period, and may in addition to such order make an order that the child be placed under the supervision of a probation officer, and the court may of its own motion, or on the application of any person, from time to time, by order renew, vary, or revoke any such order :

Provided that the court may at any time on the application of the person or institution to whose care any female child is committed under this section, and with the consent of such child, extend the period for which she was so committed until she attains the age of twenty-one years :

Power to extend period of custody in case of female child.

Provided further that a child shall not be treated as coming within the description contained in paragraph (f) if the

only common or reputed prostitute whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination.

(2) For the purposes of this section the Governor may by notice in the Gazette appoint any person or class of persons to be an authorized person.

(3) Every order made under this section shall be in writing, and any such order may be made by the court in the absence of the child; and the consent of any person or institution to undertake the care of the child in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind that person or institution.

(4) (i) Any person or institution to whose care a child is committed under this section shall, whilst the order is in force, have the like control over him as the parent, and shall be responsible for his maintenance, and he shall continue in the care of such person or institution, notwithstanding that he is claimed by his parent or any other person, and if any person—

(a) knowingly assists or induces, directly or indirectly, a person in respect of whom an order has been made under this section to escape from the person or institution to whose care he is so committed; or

(b) knowingly harbours, conceals, or prevents from returning to such person or institution, a person in respect of whom an order has been made under this section who has so escaped, or knowingly assists in so doing,

he shall be liable to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(ii) Any court having power so to commit a child shall have power to make orders on the parent or other person liable to maintain the child to contribute to his maintenance during such period as aforesaid such sums as the court shall think fit, and may from time to time vary such orders.

(iii) Any such order may be made on the complaint or application of the person or institution to whose care the child is for the time being committed, and either at the time when the order for the committal of the child to his care is made, or subsequently, and the sums contributed by the parent or

such other person shall be paid to such person or institution as the court may name, and be applied for the maintenance of the child.

(iv) Where any parent or other person has been ordered under this section to contribute to the maintenance of a child, he shall give notice of any change of address to the Commissioner of Police, and if he fails to do so without reasonable excuse, he shall be liable to a fine not exceeding twenty pounds.

(5) The Governor may at any time in his discretion discharge a child or young person from the care of any person or institution to whose care he is committed in pursuance of this section, either absolutely or on such conditions as the Governor approves, and may, if he thinks fit, make rules in relation to children so committed to the care of any person or institution, and to the duties of and remuneration of such persons or institutions with respect to such children.

21. A child or young person who runs away from a person to whose care he has been committed under this Ordinance may be apprehended without warrant and brought back to that person, if he is willing to receive him, and if he is not willing to receive him, may be brought before a juvenile court having jurisdiction in the place where he was residing immediately before he ran away and that court may commit him to the care of some other fit person or to an approved school.

Escapes from care of fit persons.

22. (1) Before making an order under this Ordinance committing a child or young person to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the child or young person, and in selecting the person to whose care the child or young person is to be committed the court shall if possible select a person who is of the same religious persuasion as the child or young person or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

Court to ascertain religious persuasion of child or young person.

(2) Every order committing a child or young person to the care of a fit person shall contain a declaration—

(a) as to the age; and

(b) as to the religious persuasion,

of the child or young person with respect to whom it is made.

(3) Every order committing a child or young person to the care of a fit person shall, subject to the provisions of this Ordinance, remain in force until he attains the age of eighteen years.

(4) The person to whose care a child or young person is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were his parent, and the person so committed shall continue in his care notwithstanding any claim by a parent or any other person.

General provisions as to children and young persons committed to the care of fit persons.

23. (1) The provisions of this section shall apply in relation to orders under this Ordinance committing a child or young person to the care of a fit person, and in this section the expressions "child" and "young person" mean a person with respect to whom such an order is in force, irrespective of whether at the date of the making of the order, or any subsequent date while the order is in force, he was, or is, a child or young person.

(2) The Governor in Council may, if he thinks fit, make rules as to the manner in which children and young persons so committed are to be dealt with and as to the duties of the persons to whose care they are committed and may cause any children or young persons so committed to be visited from time to time:

Provided that in selecting the person with whom any child or young person is to be boarded out, a court shall, if possible, select a person who is of the same religious persuasion as the child or young person, or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

(3) The Governor may at any time in his discretion discharge a child or young person from the care of the person to whose care he has been committed, and any such discharge may be granted either absolutely or subject to conditions.

(4) The Governor in Council in any case where it appears to him to be for the benefit of a child or young person may empower the person to whose care he has been committed to arrange for his emigration, but except with the authority

of the Governor in Council no person to whose care a child or young person has been committed shall arrange for his emigration :

Provided that the Governor in Council shall not empower such a person to arrange for the emigration of a child or young person, unless he is satisfied that the child or young person consents and also that his parents have been consulted or that it is not practicable to consult them.

(5) An order committing a child or young person to the care of a fit person may, on the application of any person, be varied or revoked in any case, by a juvenile court having jurisdiction within which the child or young person is residing.

(6) If on the application made by the parent or guardian or any near relative of a child or young person committed by any such order as aforesaid any court having power to vary or revoke the order is satisfied that he is not being brought up in accordance with his religious persuasion, the court shall, unless a satisfactory undertaking is offered by the person to whose care he has been committed, either revoke the order or vary it in such manner as the court thinks best calculated to secure that he is henceforth brought up in accordance with that persuasion.

(7) Where a person is of opinion that any child or young person who has been committed to his care and who is under seventeen years of age should be sent to an approved school, he may apply to a juvenile court, and that court may, if it thinks that it is desirable in his interests to do so, order him to be sent to such a school.

24. (1) The managers of any school intended for the education and training of persons to be sent there in pursuance of this Ordinance may apply to the Governor to approve the school for that purpose, and the Governor may, after making such inquiries as he thinks fit, by notice declare the school to be an approved school for the purposes of this Ordinance and shall issue a certificate of approval to the managers.

Governor's
power to
approve of
any school as
an approved
school

L.N. 49/56

(2) If at any time the Governor is dissatisfied with the condition or management of an approved school, or considers its continuation as an approved school unnecessary, he may by notice served on the managers withdraw the certificate of approval of the school as from a date specified in the notice, not being less than six months after the date of

the notice, and upon the date so specified (unless the notice is previously withdrawn) the withdrawal of the certificate shall take effect and the school shall cease to be an approved school :

Provided that the Governor, instead of withdrawing the certificate of approval, may by a notice served on the managers of the school prohibit the admission of persons to the school for such time as may be specified in the notice, or until the notice is revoked.

(3) The managers of an approved school may, on giving six months' notice in writing to the Governor of their intention so to do, surrender the certificate of approval of the school, and at the expiration of six months from the date of the notice (unless the notice is previously withdrawn), the surrender of the certificate shall take effect, and the school shall cease to be an approved school.

(4) No person shall in pursuance of this Ordinance be received into the care of the managers of an approved school after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate of approval of the school or after the date of a notice of intention to surrender the certificate; but the obligations of the managers with respect to persons under their care at the respective dates aforesaid shall continue until the withdrawal or surrender takes effect.

(5) The Governor shall cause any grant of a certificate of approval of an approved school, and any notice of the withdrawal of, or intention to surrender, such a certificate, to be advertised within one month from the date thereof in the Gazette.

Obligations on person in charge of approved school.

25. The person in charge of an approved school shall be bound to accept any person who in pursuance of this Ordinance is sent or transferred to their school or otherwise to their care, unless—

- (a) the school is a school for persons of a particular religious persuasion not being that of the person whom it is proposed to send or transfer; or
- (b) the person in charge satisfies the Governor that there are already as many persons detained in that school, or, as the case may be, otherwise under their care, as is desirable.

1934

Juveniles

No. XXII

26. The Governor may establish approved schools or he may under section 24 declare any school to be an approved school for the purposes of this Ordinance.

Governor may establish approved schools.

27. For the purposes of this Ordinance approved schools shall be divided into three classes, as follows—

Classification of approved schools.

- (a) Class I, in which a child or young person may under sections 19 and 20 of this Ordinance be detained until he attains the age of eighteen years;
- (b) Class II in which a child committed to an approved school may be detained until he attains the age of sixteen years;
- (c) Class III in which a young person committed to an approved school or a child removed under section 32 may be detained until he attains the age of ~~eighteen~~ years :

Twenty-one

Provided that where a young person has at the date of his committal to an approved school attained the age of ~~seventeen years~~ he may in such circumstances be detained until he ~~has~~ attained the age of ~~twenty~~ years.

Ord. 10/35

28. (1) All approved schools shall be under the supervision of the Chief Inspector of Approved Schools, who shall be assisted by a board appointed by the Governor to be known as the "Approved School Board". *

Control and supervision of approved schools.

(2) The Board shall consist of the following members :—

G.N. 671/34

- (a) the person for the time being holding the office of Director of Education, who shall be chairman;
- (b) the person for the time being holding the office of Chief Native Commissioner; and
- (c) such other persons not exceeding three as the Governor may appoint.

Personnel of approved school board.

(3) The Chief Inspector of Approved Schools shall be the person for the time being holding the office of Commissioner of Prisons, appointed under the provisions of the Prisons Ordinance, 1930, or any law amending or repealing the same.

No. 37 of 1930.

(4) The officers appointed to control and administer a Class III approved school and Class II approved school established by the Governor under section 26 shall be appointed under and be subject to the provisions of the Prisons Ordinance, 1930, or any law amending or replacing the same.

No. 37 of 1930.

* For the Approved School Board - see G.N 60/52 p.59

(5) The Chief Inspector of Approved Schools shall periodically visit and inspect or cause to be visited and inspected all approved schools in the Colony.

Contents of
approved
school orders.

29. (1) Any order of committal to an approved school shall contain a declaration—

- (a) as to the age; and
- (b) as to the religious persuasion;

of the child or young person with respect to whom it is made.

(2) Every approved school order shall—

- (a) specify the approved school to which the child or young person with respect to whom the order is made is first to be sent, which shall be one of the available schools (whether situate within the jurisdiction of the court making the order or not) which the court considers to be most suitable to the case; and
- (b) state whether the probation officer or the police authority is to be responsible for conveying to his school the child or young person with respect to whom the order is made.

(3) If for any reason a child or young person with respect to whom an approved school order has been made cannot be received into the approved school specified in or endorsed upon the order, another school may be specified by an endorsement or further endorsement thereon, as the case may be.

(4) An endorsement under the foregoing provisions of this section may be made either—

- (a) by the court which made the approved school order;
or
- (b) by any juvenile court.

(5) For the purposes of this section the expression "police authority", in so far as the native reserves are concerned, includes a tribal policeman appointed under the provisions of the Tribal Police Ordinance, 1929.

No. 10 of 1929.

Conveyance of
children or
young persons
to approved
school.

30. (1) The court which makes, or makes any endorsement upon, an approved school order, shall cause it to be delivered to the police authority or person responsible for conveying the child or young person to his school, and the person who conveys him to the school shall deliver the order to the person for the time being in charge of the school.

(2) The court by which an approved school order is made shall cause a record in the prescribed form, embodying all such information in the possession of the court with respect to the child or young person as is in the opinion of the court material to be known by the person in charge of the school, to be prepared and transmitted to the person for the time being in charge of the school.

See the present
form -
GN 690/35 p.348

(3) The probation officer or police authority, stated by any approved school order to be responsible for conveying a child or young person to his school, shall be responsible for conveying him there at Government expense.

(4) Where a child or young person has been ordered to be sent to an approved school, any person who harbours or conceals him after the time has come for him to go to his school shall on conviction be liable to be imprisoned for any term not exceeding two months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) Where a person authorized to take a child or young person to an approved school is, when the time has come for him to go to his school, unable to find him or unable to obtain possession of him, a court having jurisdiction may, if satisfied by information on oath that some person named in the information can produce the child or young person, issue a summons requiring the person so named to attend at the court on such day as may be specified in the summons and produce the child or young person and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Ordinance, be liable on conviction to a fine not exceeding five pounds.

(6) For the purposes of this section the expression "police authority", in so far as the native reserves are concerned, includes a tribal policeman appointed under the provisions of the Tribal Police Ordinance, 1929.

No. 10 of 1929.

31. If the person in charge of an approved school is satisfied that a person whose period of detention therein is, under the foregoing provisions of this Ordinance about to expire, needs further care or training and cannot without it be placed in suitable employment he may, if the Governor consents, detain him for a further period not exceeding six months, so, however, that he is not detained beyond the date on which he will attain the age of ~~eighteen~~ years.

Extension of
period of
detention in
approved
schools.

twenty-one

Orda 10/35

Court's order
to be an
authority for
detention.

32. Where a court orders a child to be sent to a Class II approved school the order shall be an authority for his detention in such school until he has attained the age of sixteen years. If at the date of attaining such age the period for which such child was ordered to be detained in an approved school has not expired the person in charge of the school in which he is detained shall report the case to the Governor who may under section 35 of this Ordinance order that such child be removed to a Class III approved school for the remainder of his period of detention.

Supervision
and recall
after
expiration
of order.

33. (1) A person sent to an approved school shall after the expiration of the period of his detention be under the supervision of the managers of his school—

- (a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;
- (b) if he has at the expiration of that period attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

Such supervision may be exercised directly by the managers or by a probation officer acting on behalf of the managers or by some other fit person approved by the Governor.

(2) The managers may, and if the Governor so directs, shall by notice in writing recall to the school any person under their supervision who is at the date of the recall under the age of ~~eighteen~~ years:

Once 10/35
Provided that a person shall not be so recalled unless in the opinion of the managers, or, as the case may be, of the Governor, it is necessary in his interests to recall him.

(3) A person who has been so recalled shall be released as soon as the managers think that he can properly be released, and in no case shall he be detained—

- (a) after the expiration of a period of three months, or of such longer period not exceeding six months as the Governor may, after considering the circumstances of his case, direct; or
- (b) after attaining the age of twenty-one years.

(4) The managers shall forthwith notify the Governor of the recall of any person and shall state the reason for his recall, and when the managers release any person so recalled they shall forthwith notify the Governor that they have done so.

(5) For the purposes of this Ordinance a person who is out under supervision from an approved school shall be deemed to be under the care of the managers of the school.

(6) For the purposes of this section the word "managers" includes the person in charge of a school declared by the Governor, under section 24 to be an approved school, or the person in charge of an approved school established by the Governor under section 26.

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34. (1) Any person who has been ordered to be sent to an approved school and who—

Escapes from approved schools.

- (a) escapes from the school in which he is detained or from any hospital, home or institution in which he is receiving medical attention; or
- (b) being absent from his school on temporary leave of absence or on licence, runs away from the person in whose charge he is, or fails to return to the school upon the expiration of his leave or upon the revocation of his licence; or
- (c) being absent from his school under supervision fails to return to the school upon being recalled,

may be apprehended without warrant, and may (any other Ordinance to the contrary notwithstanding) be brought before a court having jurisdiction where he is found, or where his school is situate; and that court may (notwithstanding any limitations contained in this Ordinance upon the period during which he may be detained in an approved school) order him to be brought back and to have the period of his detention in the school increased by such period not exceeding six months as the court may direct. * See AMENDMENT.

Ord. 10/35

(2) Where a person is under the last foregoing subsection brought back to his school, the period of his detention shall (notwithstanding any limitations contained in this Ordinance upon the period during which he may be detained in an approved school) be increased, over and above any increase ordered by a court, by a period equal to the period during which he was unlawfully at large.

(3) The managers of a Class I approved school shall, unless specifically exempted by the Governor, be liable for the expenses of bringing a person back to their school.

(4) If any person knowingly—

- (a) assists or induces a person to commit any such offence as is mentioned in sub-section (1) of this section; or

(b) harbours or conceals a person who has committed such an offence, or prevents him from returning,

he shall, on summary conviction, be liable to be imprisoned for any term not exceeding two months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) If a court is satisfied by information on oath that such an offence as aforesaid has been committed and that there is reasonable ground for believing that some person named in the information could produce the offender, the court may issue a summons requiring that person to attend at the court on such day as may be specified in the summons, and to produce the offender, and, if he fails to do so without reasonable excuse, he shall in addition to any other liability to which he may be subject under the provisions of this Ordinance, be liable on summary conviction to a fine not exceeding five pounds.

** Power delegated to Principal Probation Officers G.N. 822/55*

POWER TO DISCHARGE CHILD OR YOUNG PERSON

35. The Governor may at any time order any child or young person :—

- (a) To be discharged from an approved school.
- (b) To be removed from one approved school to another :
Provided that the whole period of his detention shall not be increased by such removal.
- (c) To be released from an approved school on condition that such child or young person shall live under the charge of any trustworthy and respectable person named in the order of release willing to receive and take charge of him and to keep such child or young person employed at some trade, occupation or

Ord. 46/51 calling 35A ord. 25 of 1936: - Power to commute sentence of juvenile to sentence of imprisonment

36. Save in so far as other provision is expressly made in this Ordinance, nothing in this Ordinance shall be deemed to affect any other law relating to children or young persons.

37. The Governor in Council may, in addition to the powers conferred upon him by sections 18 (3) and 23 (2) of this Ordinance, make Rules—

- (a) for the control and management of approved schools;
- (b) prescribing the character of the education and training to be given in approved schools;

G.N. 680/34 p 510

- see the Approved Schools (Class II & III) Rules 1935 - G.N. 584/35 p. 290

- (c) for the prevention of contagious or infectious diseases;
- (d) for the medical inspection of juveniles;
- (e) prescribing visits to and communications with juveniles;
- (f) prescribing the terms and conditions under which any articles declared to be "prohibited articles" may be introduced into or removed out of an approved school;
- (g) prescribing the manner in which such articles are to be removed when introduced without authority;
- (h) prescribing the conditions and limitations under which such articles may be supplied from outside an approved school to any juvenile offender under order of detention therein;
- (i) prescribing the conditions on which the possession by any juveniles of such articles may be sanctioned;
- (j) prescribing the penalties to be imposed for the supply of possession of such articles when supplied or possessed without due authority;
- (k) ~~for matters incidental to the appointment, resignation and removal of probation officers; and the performance of their duties, the reports to be made by them and the payment of their remuneration or out of pocket expenses as may appear to be necessary;~~ *repealed Aug 24/43*
- (l) for prescribing the powers and duties of the Board established under section 28 of this Ordinance.

38. On the coming into force of this Ordinance any child or young person lawfully detained in any reformatory shall forthwith be transferred to an approved school of the class appropriate to the age of such child or young person to be there detained until his period of detention shall have expired. *Transfer to appropriate approved school of juveniles at present undergoing detention.*

39. The Reformatory Schools Ordinance (Cap. 39 of the Revised Edition), and the Juvenile Offenders Ordinance, 1933, are hereby repealed. *Repeal. No. 15 of 1933.*

SCHEDULE.

OFFENCES AGAINST CHILDREN AND YOUNG PERSONS, WITH
RESPECT TO WHICH THE PROVISIONS OF SECTION 19
OF THIS ORDINANCE APPLY.

Sections 122, 125, 126, 127, 128, 129, 130, 131, 132, 133,
No. 10 of 1930. 139, 141, 142, 145, 148, 156, 201, 228 and 229 of the Penal
Code.

Any other offence involving bodily injury to a child or
young person.

ORDINANCE No. XXIII of 1934

Assented to in His Majesty's name this second day of
June, 1934.

J. BYRNE,
Governor.

[2ND JUNE, 1934.] Date of assent.

An Ordinance to Amend the Penal Code.

2nd June, 1934

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 Penal Code (Amendment) Ordinance, 1934, and shall be read as one with the Penal Code, hereinafter referred to as the Principal Ordinance.

Short title.
No. 10 of 1930.

2. Section 5 of the Principal Ordinance is hereby amended by the deletion of the words "or police" which occur in the first line of paragraph (iv) of the second part of the definition of "person employed in the public service", and by the substitution of a comma for the semi-colon after the word "waters" at the end of the definition of the word "vessel" and the addition thereafter of the words "and includes aircraft".

Amendment of
section 5 of
the Principal
Ordinance.

3. Section 25 of the Principal Ordinance is hereby amended by the addition thereto of the following sub-section, to be numbered (3) :—

Amendment of
section 25 of
the Principal
Ordinance.

“(3) When a person has been sentenced to be detained during the Governor's pleasure under the last preceding sub-section, the presiding judge shall forward to the Governor a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.”

4. Section 27 of the Principal Ordinance is hereby amended by the addition thereto of the following sub-sections, to be numbered (7) and (8) :—

Amendment of
section 27 of
the Principal
Ordinance.

“(7) If any person has been sentenced to corporal punishment in substitution for any other punishment to

which he might have been liable, and such sentence of corporal punishment is, wholly or partially, prevented from being carried out, such person shall be kept in custody, and shall as soon as possible be taken before the court which passed the sentence of corporal punishment, and such court may, in its discretion, either remit such sentence or pass upon such person any sentence to which he might have been liable.

“(8) An offender sentenced to undergo corporal punishment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect, or for ascertaining whether the same shall be carried into effect.”

Amendment of section 29 of the Principal Ordinance.

5. Section 29 of the Principal Ordinance is hereby amended by the deletion of the expression “104 and 105” which occurs in the second and third lines thereof, and the substitution therefor of the expression “105, 106, and 357”.

Amendment of section 31 of the Principal Ordinance. No. 11 of 1930.

6. Section 31 of the Principal Ordinance is hereby amended by the insertion at the beginning thereof of the words “Subject to the limitations imposed by section 166 of the Criminal Procedure Code”.

Amendment of section 35 of the Principal Ordinance.

7. Section 35 of the Principal Ordinance is hereby amended by the deletion of the eighth and ninth lines thereof and the substitution therefor of the following :—

“ it shall be executed concurrently with the former sentence or any part thereof ”

and by the addition of the following proviso at the end thereof :—

“ Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under section 28 (iii) (a) of this Code or of any part thereof.”

Addition of section 35A to the Principal Ordinance.

Escaped convicts to serve unexpired sentences when recaptured.

8. The following section is hereby inserted in the Principal Ordinance as section 35A :—

“ 35A. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or corporal punishment, shall, subject to the provisions of this

Code, take effect immediately, and if of imprisonment shall take effect according to the following rules, that is to say :—

- (i) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.
- (ii) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence."

9. Paragraph (2) of section 38 of the Principal Ordinance is hereby amended by the deletion of the words "or a police officer" which occur in the third line thereof, and the substitution therefor of the words "District Officer, Magistrate, or officer in charge of a police station".

Amendment of section 38 of the Principal Ordinance.

10. Section 88 of the Principal Ordinance is hereby amended by the deletion of the comma after the word "asks" which occurs in the fourth line thereof, and the insertion of the words "for, solicits," between that word "asks" and the word "receives".

Amendment of section 88 of the Principal Ordinance.

11. The following section is hereby inserted in the Principal Ordinance as section 94A :—

Addition of section 94A to the Principal Ordinance.
Unauthorized administration of oaths.

" 94A. Any person who administers an oath, or takes solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so is guilty of a misdemeanour and is liable to imprisonment for one year: Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate or a justice of the peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation, or affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country."

Addition of section 96A to the Principal Ordinance.

12. The following section is hereby inserted in the Principal Ordinance as section 96A :—

Threat of injury to persons employed in public service.

“ 96A. Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service, is guilty of a misdemeanour.”

Addition of section 97A to the Principal Ordinance.

13. The following section is hereby inserted in the Principal Ordinance as section 97A :—

False statements by interpreters.

“ 97A. If any person, lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in the proceeding which he knows to be false, or does not believe to be true, he shall be guilty of perjury.”

Amendment of section 103 of the Principal Ordinance.

14. Section 103 of the Principal Ordinance is hereby amended by the deletion of the words “or other thing of any kind” which occur in the second line thereof, and the substitution therefor of the words “or thing of any kind whatsoever”, and by the insertion of the words “removes or” between the word “wilfully” and the word “destroys” which occur in the third line thereof.

Amendment of section 108 of the Principal Ordinance.

15. Section 108 of the Principal Ordinance is hereby amended by the insertion after sub-section (1) thereof of the following sub-section, to be numbered (2) :—

“ (2) When any offence against paragraphs (a), (b), (c), (d), or (i) of sub-section (1) of this section is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding twenty pounds or in default of payment to imprisonment without hard labour for a term not exceeding one month.”;

and by the renumbering as (3) of the present sub-section (2) of the said section.

16. Section 115A of the Principal Ordinance is hereby amended by the substitution of the words "person employed in the public service" for the words "public servant" wherever such words occur therein.

Amendment of section 115A of the Principal Ordinance.

17. The following section is hereby inserted in the Principal Ordinance as section 120A :—

Addition of section 120A to the Principal Ordinance.

"120A. Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects, or harms the dead body of any person, or, being under a duty to cause the dead body of any person to be buried, fails to perform such duty, is guilty of a misdemeanour."

Hindering burial of dead body, etc.

18. Section 121 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Amendment of section 121 of the Principal Ordinance.

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

Writing or uttering words with intent to wound religious feelings.

19. Sub-section (3) of section 127 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor :—

Repeal and replacement of sub-section (3) of section 127 of the Principal Ordinance.

"(3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, is guilty of a misdemeanour, and is liable to imprisonment for one year."

20. Section 147 of the Principal Ordinance is hereby amended :—

Amendment of section 147 of the Principal Ordinance.

(a) by the substitution of the word "illicit" for the word "unlawful" wherever it occurs in the section; and
(b) by deleting the definition of "native" in sub-section (6) of the section and substituting therefor the following :—

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

Repeal and replacement of section 163 of the Principal Ordinance. Lotteries.

21. Section 163 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

“ 163. (1) Any person who opens, keeps, or uses any place for carrying on a lottery not authorized by the Commissioner of Police or by a police officer not below the rank of Assistant Superintendent to whom power has been delegated by the Commissioner of Police to give such authority, is guilty of a misdemeanour, and any person who in any way infringes or fails to comply with any of the conditions (if any) laid down when such authorization as above mentioned is given is guilty of a misdemeanour and is liable to imprisonment for a period not exceeding six months.

(2) Any person who prints or publishes, or causes to be printed or published, any advertisement or other notice of or relating to any lottery not so authorized or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery not so authorized, is liable to a fine of fifty pounds :

Provided that the provisions of this sub-section shall not apply to any advertisement or notice which is printed or published solely for the purpose of notifying to the public the results of any unauthorized lottery.

(3) In this section, ‘lottery’ includes any scheme or device for the sale, gift, disposal or distribution of any property depending upon or determined by lot or chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers, or figures, or by means of a wheel or trained animal, or otherwise howsoever.

(4) When any person is convicted of an offence under this section, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to His Majesty of any instrument or thing used in connexion with the lottery concerning which the conviction has taken place.”

Repeal and replacement of section 165 of the Principal Ordinance. Traffic in obscene publications.

22. Section 165 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

“ 165. (1) Any person who—

(a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition,

makes, produces, or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects, or any other object tending to corrupt morals; or

- (b) for any of the purposes above-mentioned imports, conveys, or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or
- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or
- (d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or
- (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

is guilty of a misdemeanour and is liable to imprisonment for two years or to a fine of one hundred pounds.

(2) If, in respect of any of the offences specified in paragraphs (a), (b), (c) or (d) of sub-section (1), any constituent element thereof is committed in the Colony, such commission shall be sufficient to render the person accused of such offence triable therefor in the Colony.

(3) A court, on convicting any person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4) A court may, on the application of the Attorney General, Solicitor General, or a Crown Counsel or a Superintendent of Police, order the destruction of any obscene matter or thing to which this section relates,

whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing."

Amendment of section 166 of the Principal Ordinance.

23. Section 166 of the Principal Ordinance is hereby amended as follows :—

(a) by the deletion of the word "and" which occurs at the end of paragraph (4) thereof ;

(b) by the deletion of paragraph (5) thereof and the substitution therefor of the following paragraph :—

"(5) Every person who without lawful excuse publicly does any indecent act;" and

(c) by the addition thereto of the following paragraphs, to be numbered (6) and (7) :—

(6) Every person who in any public place solicits for immoral purposes ; and

(7) Every person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms,".

Amendment of section 167 of the Principal Ordinance.

24. Section 167 of the Principal Ordinance is hereby amended by the deletion therefrom of sub-section (2) thereof, and by the renumbering of sub-sections (3), (4), and (5), as (2), (3), and (4), and by the deletion of the words "with or without corporal punishment" which occur in the last two lines thereof.

Amendment of section 181 of the Principal Ordinance.

25. Paragraph (c) of sub-section (1) of section 181 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

"(c) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, advocate, juror, assessor, witness or party thereto ; or".

Addition of section 223A to the Principal Ordinance.

Dealing in poisonous substances in negligent manner.

26. The following section is hereby inserted in the Principal Ordinance as section 223A :—

" 223A. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable

danger to human life from such poisonous substance, is guilty of a misdemeanour, and is liable to imprisonment for six months, or to a fine of one hundred pounds."

27. Section 229 of the Principal Ordinance is hereby amended (a) by the substitution of a comma for the full-stop which occurs at the end thereof; and (b) by the addition immediately thereafter of the words "with or without corporal punishment".

Amendment of section 229 of the Principal Ordinance.

28. The following section is hereby inserted in the Principal Ordinance as section 240A :—

Addition of section 240A to the Principal Ordinance.

" 240A. Whoever wrongfully confines any person is guilty of a misdemeanour, and is liable to imprisonment for one year or to a fine of two hundred pounds."

Punishment for wrongful confinement.

29. Section 247 of the Principal Ordinance is hereby amended by the deletion of the word "for" which occurs in the eleventh line thereof and the substitution therefor of the word "from".

Amendment of section 247 of the Principal Ordinance.

30. The following section is hereby inserted in the Principal Ordinance as section 284A :—

Addition of section 284A to the Principal Ordinance.

" 284A. Any person who—

Criminal trespass.

- (1) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property;
- (2) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence,

is guilty of the misdemeanour termed "criminal trespass" and is liable to imprisonment for three months.

If the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property, the offender is liable to imprisonment for one year."

31. Section 285 of the Principal Ordinance is hereby amended by the insertion of the words "dangerous or offensive weapon or" after the word "any" which occurs in the second line thereof; and by the insertion of the words "carried or" after the word "housebreaking" which occurs in the third line thereof.

Amendment of section 285 of the Principal Ordinance.

Amendment of section 294 of the Principal Ordinance.

32. Section 294 of the Principal Ordinance is hereby amended by the deletion of the word "Ordinance" in the third line thereof, and the substitution therefor of the word "law".

Amendment of section 295 of the Principal Ordinance.

33. Section 295 of the Principal Ordinance is hereby amended by the insertion of the words "or having reason to believe" after the word "knowing" in the second line of sub-section (2) thereof, and by the addition thereto of the following sub-section, to be numbered (3) :—

" (3) No person shall be convicted of an offence under this section unless it shall first be proved that the property which is the subject-matter of the charge has in fact been stolen, or feloniously or unlawfully taken, extorted, obtained, converted or disposed of".

Amendment of section 296 of the Principal Ordinance.

34. Section 296 of the Principal Ordinance is hereby amended by the deletion of the words "brought before a court" which appear in the first line thereof, and by the deletion of the word "such" which occurs in the fifth line thereof and the substitution therefor of the word "the".

Addition of section 296A to the Principal Ordinance.

35. The following section is hereby inserted in the Principal Ordinance as section 296A :—

Tracing possession.

"296A. (1) If any person brought or appearing before a court under the provisions of the last preceding section declares that he received any such thing as therein mentioned from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, the court may cause every such other person, and also any other person through whose possession any such thing shall previously have passed, to be brought before it.

(2) Upon any such person as is in the last preceding sub-section mentioned being brought before it, it shall be lawful for the court to examine him as to whether he has been in possession of any such thing as aforesaid, and upon his admitting such possession, or upon it being proved to the satisfaction of the court that such person has been in possession of any such thing, the court may call upon such person to give an account to the satisfaction of the court by what lawful means such person came by such thing, and if such person fails, within a reasonable time to be assigned by such court, to give such

account, he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for any term not exceeding six months.

(3) For the purposes of this section, the possession of a carrier, agent, or servant shall be deemed to be the possession of the person who shall have employed such carrier, agent, or servant to convey the same."

36. Section 297 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Repeal and replacement of section 297 of the Principal Ordinance.

"297. Any person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in the Colony the person committing it would have been guilty of a felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside the Colony, is guilty of an offence of the like degree (whether felony or misdemeanour) and is liable to imprisonment for seven years."

Receiving goods stolen outside Colony.

37. Section 305 of the Principal Ordinance is hereby amended by the deletion of the word "vegetable" which occurs in the third line thereof; and by the insertion of the word "picked" after the word "standing" which occurs in the third and fourth lines thereof.

Amendment of section 305 of the Principal Ordinance.

38. Section 314 of the Principal Ordinance is hereby amended by the deletion of paragraph (3) thereof, and the substitution therefor of the following paragraph :—

Amendment of section 314 of the Principal Ordinance.

" (3) wilfully removes, defaces, or injures any survey mark erected by or under the authority of any licensed surveyor or any mark erected by an intending applicant for any lease, licence or right under an Ordinance relating to mines or minerals."

39. Section 317 of the Principal Ordinance is hereby amended by the addition thereto at the end thereof of the words "or to deceive".

Amendment of section 317 of the Principal Ordinance.

40. Section 329 of the Principal Ordinance is hereby amended by the addition of the words "or to deceive" after the word "defraud" in the first line thereof.

Amendment of section 329 of the Principal Ordinance.

Amendment of
section 343 of
the Principal
Ordinance.

Uttering
metal or coin
not current
as coin.

41. Section 343 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

“343. (1) Any person who, with intent to defraud, utters as and for coin any medal or piece of metal is guilty of a misdemeanour and is liable to imprisonment for one year.

(2) Any person who, with intent to defraud, utters as and for coin lawfully current in the Colony by virtue of any Order in Council, Ordinance, Proclamation or otherwise, any coin not so lawfully current is guilty of a misdemeanour and is liable to imprisonment for one year.”

Amendment of
section 346 of
the Principal
Ordinance.

42. Section 346 of the Principal Ordinance is hereby amended by the insertion of the word “or” at the end of paragraph (7) thereof, and by the addition after that paragraph of the following paragraph :—

“(8) fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used,”.

ORDINANCE No. XXIV of 1934

Assented to in His Majesty's name this second day of June, 1934.

J. BYRNE,
Governor.

[2ND JUNE, 1934.] Date of assent.

An Ordinance to Amend the Criminal Procedure Code.

2nd June, 1934

Date of commencement

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

1. This Ordinance may be cited as the Criminal Procedure Code (Amendment No. 2) Ordinance, 1934, and shall be read as one with the Criminal Procedure Code, hereinafter referred to as the Principal Ordinance. Short title.
No. 11 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by the insertion in the definition of the term "officer in charge of a police station", after the word "includes" in the first line thereof, of the following words: "any officer superior in rank to an officer in charge of a police station and also includes". Amendment of section 2 of the Principal Ordinance.

3. Sub-section (1) of section 11 of the Principal Ordinance is hereby amended by the deletion of the words "and no fine exceeding fifty pounds shall be levied" and the substitution therefor of the words "and no order for payment of a sum of money exceeding fifty pounds shall be executed". Amendment of section 11 (1) of the Principal Ordinance.

4. Section 27 of the Principal Ordinance is hereby amended by the addition thereto of the following paragraph :—
" (j) any person for whom he has reasonable cause to believe a warrant of arrest has been issued." Amendment of section 27 of the Principal Ordinance.

5. Section 34 of the Principal Ordinance is hereby amended by the deletion of the word "such" which occurs in the twelfth line thereof, and the substitution therefor of the word "any", and by the addition thereto at the end thereof of the following proviso :— Amendment of section 34 of the Principal Ordinance.

“Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.”

6. The following section is hereby inserted in the Principal Ordinance as section 41A :—

Security for good behaviour from persons disseminating seditious matters.

“ 41A. Whenever a magistrate empowered to hold a subordinate court of the first class has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or in any wise abets the dissemination of—

No. 10 of 1930.

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 47 of the Penal Code; or

No. 10 of 1930.

(b) any matter concerning a judge which amounts to libel under the Penal Code,

such magistrate may (in manner provided in this Code) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit to fix.”

Amendment of section 66 of the Principal Ordinance.

7. Section 66 of the Principal Ordinance is hereby amended by the deletion of the word “tried” in the last line thereof, and the substitution therefor of the words “inquired into or tried”, and by the addition thereafter of the following sentence :—

“ The person to whom the warrant is directed shall execute it according to its tenor without delay.”

Amendment of section 69 of the Principal Ordinance.

8. Section 69 of the Principal Ordinance is hereby amended by the deletion of the word “and” in the third line thereof and the substitution therefor of the word “or”.

Repeal and replacement of section 74 of the Principal Ordinance.

9. Section 74 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

“ 74. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, any court entertaining such doubt may, in its discretion, report the circumstances to the Supreme Court, and the Supreme Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the Supreme Court shall be final and conclusive, except that it shall be open to an accused person to show that no court in the Colony has jurisdiction in the case.”

Supreme Court to decide in cases of doubt.

10. Section 81 of the Principal Ordinance is hereby amended by the deletion of the words “last preceding section” which occur in the second line thereof and the substitution therefor of the words “two last preceding sections”, and by the substitution of the words “these sections” for the words “this section” which occur in the proviso thereto.

Amendment of section 81 of the Principal Ordinance.

11. Section 83 of the Principal Ordinance is hereby amended by the deletion of sub-section (2) thereof and the substitution therefor of the following sub-section :—

Amendment of section 83 of the Principal Ordinance.

“ (2) The Attorney General by writing under his hand may appoint any advocate of the Supreme Court or person employed in the public service, not being a police officer below the rank of assistant inspector of police, to be a public prosecutor for the purposes of any case.”

12. Section 89 of the Principal Ordinance is hereby amended by the deletion of the word “or” which occurs in the second line of sub-section (2) thereof, and the substitution therefor of the word “and”.

Amendment of section 89 (2) of the Principal Ordinance.

13. Section 91 of the Principal Ordinance is hereby amended by the deletion of the word “male” which occurs in the third line thereof, and by the insertion, after the word “him” which occurs in the fourth line thereof, of the words “or with his employer”.

Amendment of section 91 of the Principal Ordinance.

14. Section 116 of the Principal Ordinance is hereby amended by the insertion of the words “or a justice of the peace” after the word “court” which occurs in the first line thereof, and by the insertion of the words “or justice of the peace” after the word “court” which occurs in the fourth line thereof.

Amendment of section 116 of the Principal Ordinance.

Repeal and replacement of section 117 of the Principal Ordinance.

Execution of search warrants.

15. Section 117 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

“117. Every search warrant may be issued on any day (including Sunday) and may be executed on any day (including Sunday) between the hours of sunrise and sunset, but the court or justice of the peace may, by the warrant, in its or his discretion, authorize the police officer or other person to whom it is addressed to execute it at any hour.”

Repeal and replacement of section 129 of the Principal Ordinance.

Forfeiture of recognizance.

16. Section 129 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

“ 129. (1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or when the recognizance is for appearance before a court, to the satisfaction of such court, that such recognizance has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such recognizance to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person, or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to such person without such limits, when endorsed by any magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.

(5) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved."

17. Section 132 of the Principal Ordinance is hereby amended by the insertion after the word "other" which occurs in the third line of paragraph (a) thereof of the words: "whether they are offences committed with respect to the same person or not".

Amendment of section 132 of the Principal Ordinance.

18. The following section is hereby inserted in the Principal Ordinance as section 132A :—

" 132A. The following persons may be charged and tried together, namely—

Joint trial of one or more accused.

- (a) persons accused of the same offence committed in the course of the same transaction ;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;
- (c) persons accused of more than one offence of the same kind within the meaning of section 132 (a) committed by them jointly within the period of twelve months ;
- (d) persons accused of different offences committed in the course of the same transaction ;
- (e) persons accused of an offence under Chapters XXVI to XXX of the Penal Code and persons accused of receiving or retaining or assisting in the disposal or concealment of property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;

No. 10 of 1930.

- No. 10 of 1930. (f) persons accused of offences under sections 295 and 296 of the Penal Code or either of those sections in respect of property the possession of which has been transferred by one offence; and
- No. 10 of 1930. (g) persons accused of any offence under Chapter XXXVI of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence."
- Amendment of section 141 of the Principal Ordinance. **19.** Section 141 of the Principal Ordinance is hereby amended by the insertion of the words "by evidence on oath" after the word "satisfied" which occurs in the first line thereof.
- Amendment of section 145 of the Principal Ordinance. **20.** Section 145 of the Principal Ordinance is hereby amended by the deletion of the words "examine any person in attendance though not summoned" which occur in the second and third lines thereof, and the substitution therefor of the words "call any person".
- Amendment of section 149 (1) of the Principal Ordinance. **21.** Sub-section (1) of section 149 of the Principal Ordinance is hereby amended by the deletion of the words "inquiry, trial or other" which occur in the first and second lines thereof, and by the insertion of the words "or a magistrate empowered to hold a subordinate court of the first class" after the word "Court" which occurs in the second line thereof, and by the insertion of the words "or magistrate" after the word "court" which occurs in the seventh line thereof.
- Amendment of section 150 of the Principal Ordinance. **22.** Section 150 of the Principal Ordinance is hereby amended by the insertion of the words "or magistrate" after the word "court" which occurs in the third line thereof.
- Amendment of section 151 of the Principal Ordinance. **23.** Section 151 of the Principal Ordinance is hereby amended by the deletion of the words "inquiry, trial or other" which occur in the first line thereof, and by the insertion of the words "other than a magistrate empowered to hold a subordinate court of the first class" after the word "magistrate" which occurs in the second line thereof.
- Amendment of section 152 of the Principal Ordinance. **24.** Section 152 of the Principal Ordinance is hereby amended by the insertion after the word "Court" in the fourth line thereof of the words "or to the magistrate empowered to hold a subordinate court of the first class (as the case may be)".

1934

Criminal Procedure Code

No. XXIV

25. Section 153 of the Principal Ordinance is hereby amended by the deletion of the words "inquiry, trial or other" which occur in the second line thereof.

Amendment of section 153 of the Principal Ordinance.

26. Section 154 of the Principal Ordinance is hereby amended by the substitution of the figures "219" for the figures "218" which occur in paragraph (8) thereof.

Amendment of section 154 of the Principal Ordinance.

27. The following section is hereby inserted in the Principal Ordinance as section 169A :—

" 169A. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a warrant may at any time prior to payment out of court of the proceeds of sale of such property give notice in writing to the court of his objection to the attachment of such property.

Objections to attachment.

Such notice shall set out shortly the nature of the claim which such person makes to the whole or portion of the property attached, and shall certify the value of the property claimed by him. Such value shall be deponed to on affidavit, which shall be filed with the notice.

(2) Upon receipt of a valid notice given under the last preceding sub-section, the court shall order a stay of the execution proceedings, and shall, by notice in writing, call upon the officer having the execution of the warrant to intimate to the court in writing, within fifteen days or within such other period as may be prescribed in such notice, whether he proposes to proceed with the attachment and execution thereunder wholly or in part.

(3) Should the officer, having the execution of a warrant in pursuance of a notice issued under the last preceding sub-section, intimate in writing to the court within the period prescribed by such notice that he does not propose to proceed with the execution of the attachment of the whole or of portion of the property specified in the warrant, the court shall make an order raising the attachment as to the whole or portion of the property subject to the attachment in accordance with the intimation received from the officer having the execution of the warrant.

(4) Should the officer, having the execution of a warrant in pursuance of a notice issued under sub-section (2) of this section, intimate to the court in the manner prescribed that he proposes to proceed with the attachment, the court shall by notice in writing direct the objector within ten days, or such other period as it may prescribe, to take such proceedings as may be necessary to establish his claim.

(5) (a) Should the objector fail to file proceedings to establish his claim within the time prescribed by notice issued under the last preceding sub-section, his objections shall be deemed to be waived and the attachment and consequential execution shall proceed.

(b) Should the objector file proceedings to establish his claim within the time prescribed by notice issued under the last preceding sub-section, the attachment may be stayed pending the final decision of the court in such proceedings.

(6) Where, upon the said investigation, the court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person, paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly, or to such extent as it thinks fit, from attachment."

Repeal and replacement of section 172 of the Principal Ordinance.

Property stolen.
No. 10 of 1930.

28. Section 172 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

" 172. (1) If any person guilty of any offence as is mentioned in Chapters XXVI to XXXI, both inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.

(2) In every case in this section referred to, the court before whom such offender is convicted shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner :

Provided that where goods as defined in the Sale of Goods Ordinance, 1930, have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender :

No. 33 of 1930.

And provided that nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

(3) On the restitution of any stolen property if it appears to the court by the evidence that the offender has sold the stolen property to any person, that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(4) The operation of any order under this section shall (unless the court before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute) be suspended—

(a) in any case until the time for appeal has elapsed ;
and

(b) in case where an appeal is lodged, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal. The Supreme Court may make provision by rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(5) Any person aggrieved by an order made under this section may appeal to the Supreme Court, and upon the hearing of such appeal the court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied."

Amendment of section 179 of the Principal Ordinance.

29. Section 179 of the Principal Ordinance is hereby amended by the deletion of the expression "or 259" which occurs in the second line thereof, and the substitution therefor of the expression "259 or 260".

Amendment of section 187 of the Principal Ordinance.

30. Section 187 of the Principal Ordinance is hereby amended by the insertion after the word "months" which occurs in the second line of sub-section (4) thereof of the words "and no fine of an amount exceeding twenty pounds", and by the insertion of the words "or inflicted" after the word "passed" which occurs in the second line of sub-section (4) thereof.

Amendment of section 190 of the Principal Ordinance.

31. Section 190 of the Principal Ordinance is hereby amended by the deletion of the words "by virtue of a warrant" which occur in the fifth line thereof and the substitution therefor of the words "under arrest".

Amendment of section 206 of the Principal Ordinance.

32. Section 206 of the Principal Ordinance is hereby amended by the addition thereto of the following paragraph to be numbered (f) :—

"(f) If the accused is charged with an offence against sections 229, 231, 254, 256, 257, 258, 261, 266, 267 or 269 of the Penal Code, and the court, after hearing the evidence for the prosecution, is of the opinion that the accused would be adequately punished by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court."

No. 10 of 1930.

33. Section 209 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

"209. Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans.

Europeans committed for trial to be tried by a jury of Europeans.

On trial for murder, treason or rape, the number of the jury shall be twelve; on trials for other offences the number of the jury shall be five."

34. Section 264 of the Principal Ordinance is hereby amended by the insertion after the word "registrar" which occurs in the fourth line thereof of the words "or other officer of the court".

Amendment of section 264 of the Principal Ordinance.

35. Section 271 of the Principal Ordinance is hereby amended by the deletion of the word "six" wherever it occurs therein and the substitution therefor of the word "four", and by the deletion of the word "twelve" which occurs in the eighth line thereof and the substitution therefor of the word "eight".

Amendment of section 271 of the Principal Ordinance.

36. Section 274 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 274 of the Principal Ordinance.

" 274. (1) When the jurors have been chosen they shall be sworn.

Swearing of jury.

(2) When the jurors have been sworn they shall appoint one of their number to be foreman.

Foreman of jury.

(3) If a majority of the jury do not agree in the appointment of a foreman within such time as to the court seems reasonable, he shall be appointed by the court."

37. Section 275 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 275 of the Principal Ordinance.

" 275. The foreman shall preside at the meetings of the jury for consideration and ask any information from the court that is required by the jury or any of the jurors and shall announce the verdict of the jury."

Foreman to preside and ask information from court.

38. Section 277 of the Principal Ordinance is hereby amended by the deletion of the word "eight" which occurs in the eleventh line thereof and the substitution therefor of the word "four".

Amendment of section 277 of the Principal Ordinance.

39. Section 285 of the Principal Ordinance is hereby amended by the addition thereto at the end thereof of the following proviso:—

Amendment of section 285 of the Principal Ordinance.

“ Provided that when the report of a medical officer or other medical witness has been put in during the proceedings at the preliminary inquiry, and the medical officer or other medical witness himself is called at the Supreme Court trial, notice of the evidence of such medical officer or other medical witness shall not be required to be given to the accused person.”

40. The following section is hereby inserted in the Principal Ordinance as section 287A :—

Deposition of medical officer may be read as evidence.

“287A. The deposition of a medical officer or other medical witness, taken and attested by a magistrate in the presence of the accused person, may with the consent of the accused person or his advocate be read as evidence, although the deponent is not called as a witness :

Provided that the court may, if it thinks fit, summon and examine such deponent, as to the subject-matter of his deposition.”

Amendment of section 305 of the Principal Ordinance.

41. Section 305 of the Principal Ordinance is hereby amended by the insertion after the word “registrar” which occurs in the third line thereof of the words “or other officer of the court”.

Amendment of section 326 of the Principal Ordinance.

42. Section 326 of the Principal Ordinance is hereby amended by the deletion of the words “punishable with not more than three years’ imprisonment” which occur in the second line thereof and the substitution therefor of the words “not punishable with death”, and by the deletion of the words “(not exceeding one year)” which occur in the twelfth line thereof and the substitution therefor of the words “(not exceeding three years)”.

43. Section 317 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Warrant in case of sentence of imprisonment.

“ 317. A warrant under the hand of the judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Colony, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence.

described in such warrant, not being a sentence of death. Subject to the provisions of section 35 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of the date on which it was pronounced."

44. Section 335 of the Principal Ordinance is hereby amended by the addition thereto at the end thereof of the following proviso :—

Amendment of section 335 of the Principal Ordinance.

" Provided that the Supreme Court may for good cause admit an appeal though the period of limitation prescribed in this section has elapsed."

45. Section 338 of the Principal Ordinance is hereby amended by the deletion of the words "(if not in custody)" which occur in the sixth line thereof.

Amendment of section 338 of the Principal Ordinance.

46. Section 349 of the Principal Ordinance is hereby amended by the deletion of the words "a magistrate empowered to hold a subordinate court of the first class" which occur in sub-section (3) thereof and the substitution therefor of the words "the court which imposed the sentence".

Amendment of section 349 of the Principal Ordinance.

47. Section 354 of the Principal Ordinance is hereby amended by the deletion of the words "The appellant, if then in custody, shall be liberated" which occur in the first line of the second paragraph thereof and the substitution therefor of the words "If the appellant is then in custody, the court may liberate him", and by the insertion of the following paragraph after the second paragraph thereof :—

Amendment of section 354 of the Principal Ordinance.

" When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced."

48. Section 372 of the Principal Ordinance is hereby amended by the insertion of the word "or" after the word "trial" which occurs in paragraph (d) of sub-section (1) thereof.

Amendment of section 372 of the Principal Ordinance.

49. The First Schedule to the Principal Ordinance is hereby amended—

Amendment of First Schedule to the Principal Ordinance.

(a) by substituting in the second column thereof, in the entry relating to section 127 (3) of the Penal Code, the words " Insulting the modesty of a woman " for the words " Indecently insulting or annoying females";

(b) by adding in the fourth column thereof, in the entry relating to section 229 of the Penal Code, the words "with or without corporal punishment";

(c) by adding, in their respective numerical positions, the following :—

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native*
94A	Unauthorized administration of oaths	Shall not arrest without warrant	Imprisonment for one year.	Any magistrate.
96A	Threat of injury to persons employed in the public service.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
97A	False statements by interpreters.	ditto	The same punishment as for perjury.	Subordinate court of the first class.
120A	Hindering burial of dead body, etc.	May arrest without warrant.	Imprisonment for two years.	Any magistrate.
223A	Dealing in poisonous substances in negligent manner.	Shall not arrest without warrant.	Imprisonment for six months or a fine of £100.	Subordinate court of the first or second class.
240A	Punishment for wrongful confinement.	May arrest without warrant.	Imprisonment for one year or a fine of £200.	
284A	Criminal trespass. If the property upon which offence committed is building used as human dwelling or as a place of worship or as a place for custody of property.	ditto ditto	Imprisonment for three months. Imprisonment for one year.	Any magistrate. ditto
297	Receiving goods stolen outside Colony.	ditto	Imprisonment for seven years.	Subordinate court of the first class.

50. The Second Schedule to the Principal Ordinance is hereby amended—

Amendment
of Second
Schedule to
the Principal
Ordinance.

- (a) by substituting the figures "186" for the figures "187" which occur in Form 1 thereof;
 - (b) by substituting the figures "185" for the figures "188" which occur in Form 3 thereof.
 - (c) by substituting the figures "122" for the figures "123" which occur in Form 4 thereof;
 - (d) by substituting the figures "271" for the figures "272" which occur in Form 8 thereof;
 - (e) by substituting the figures "97" for the figures "98" which occur in Form 20 thereof.
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ORDINANCE No. XXV of 1934

Assented to in His Majesty's name this second day of June, 1934.

J. BYRNE,
Governor.

Date of assent.

[2ND JUNE, 1934.]

**An Ordinance to Supply a Further Sum of Money
for the Service of the Year ended the 31st day
of December, 1933.**

Date of commencement

2nd June, 1934

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

Short title.

1. This Ordinance may be cited as the 1933 Supplementary Appropriation Ordinance, 1934.

Public revenue charged.

2. The Public Revenue for the period 1st January to 31st December, 1933, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the period 1st January to 31st December, 1933, with a further sum of eighty-two thousand, six hundred and ninety-two pounds, sixteen shillings and seventy cents, in addition to the sums provided by the 1933 Appropriation Ordinance, 1933.

No. 36 of 1933.

Application of money granted.

3. The money granted by this Ordinance shall be applied to the purposes and services expressed in the Schedule annexed hereto.

Treasurer's authority for payment.

4. The Treasurer of the Colony and Protectorate of Kenya is hereby given authority for having paid out of the Revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the Schedule, the said sum of eighty-two thousand, six hundred and ninety-two pounds, sixteen shillings and seventy cents, which have come in course of payment during the period 1st January to 31st December, 1933.

SCHEDULE.

<i>No. of Head</i>	£	s.	cts.
I—His Excellency the Governor ...	55	9	48
Ia—His Excellency the Governor Extraordinary	632	18	12
VI—Conference of East African Governors	677	16	69
VIIIa—Education Department Extra- ordinary	34	8	18
XIII—Legal Department	343	10	09
XVIa—Military Extraordinary	1,466	3	68
XVIIa—Miscellaneous Services Extra- ordinary	35,253	5	60
XVIII—Pensions and Gratuities	41,747	9	95
XXa—Post Office and Telegraphs Extra- ordinary	343	4	48
XXI—Printing and Stationery	131	0	82
XXXII—Treasury	637	13	13
XXXIIa—Treasury Extraordinary	307	10	99
XXXIII—Public Works Extraordinary	1,062	5	49
Total	£82,692	16	70

ORDINANCE No. XXVI of 1934

Assented to in His Majesty's name this second day of June, 1934.

J. BYRNE,
Governor.

Date of assent.

[2ND JUNE, 1934.]

An Ordinance to Amend the Crown Lands Ordinance.

Date of commencement

2nd June, 1934

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

Short title.

1. This Ordinance may be cited as the Crown Lands (Amendment) Ordinance, 1934, and shall be read as one with the Crown Lands Ordinance (Chapter 140 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Amendment of section 24 (3) of the Principal Ordinance.

2. Sub-section (3) of section 24 of the Principal Ordinance is hereby amended by the addition of the following words at the end thereof :—

“Provided further that the foregoing proviso shall apply to every building lease granted under the Crown Lands Ordinance, 1902, in the event of the property held under such lease being sub-divided and the portions assigned.”

Amendment of section 44 (2) (b) of the Principal Ordinance.

3. Sub-section (2) (b) of section 44 of the Principal Ordinance is hereby amended by the addition of the following words at the end thereof :—

“Provided further that the foregoing proviso shall apply to every lease granted under the Crown Lands Ordinance, 1902, for grazing and/or agricultural purposes, in the event of the property held under such lease being sub-divided and the portions assigned.”

Amendment of various sections of the Principal Ordinance.

4. The Principal Ordinance is hereby further amended by the deletion of the words “in Council” wherever such words occur in sections 42, 43 and 44 of the Principal Ordinance.

65/20

ORDINANCE No. XXVII of 1934

Assented to in His Majesty's name this thirty-first day of May, 1934.

J. BYRNE,
Governor.

[31st MAY, 1934.] Date of assent.

An Ordinance to Establish a Provident Fund for Members of the Local European Civil Service of the Colony and to Provide for Contributions to such Fund by Members of the said Service and by Government.

By Notice.

Date of commencement

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

1. This Ordinance may be cited as the European Civil Service Provident Fund Ordinance, 1934, and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Short title and commencement.

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

Interpretation.

“common service” means a service (common to the Colony and to the Tanganyika Territory or the Uganda Protectorate or to both the Tanganyika Territory and the Uganda Protectorate) part of the cost of which is reimbursed to the Colony by one or both of such dependencies;

“contributor” means a person who is not prohibited from being a contributor by the provisions of section 5 of this Ordinance, and who holds an office which has been declared by the Governor by notice to be a post in the Local European Civil Service of the Colony or such other post in the Civil Service of the Colony or in a common service as the Governor may by notice direct. All such posts are hereinafter referred to as “the service”;

who has been appointed under a permanent appointment to be a member of the European Local Civil Service and

“fund” means the Provident Fund established under this Ordinance;

“interest” shall include compound interest;

“salary” means the substantive salary payable to a contributor, but does not include any allowance or other receipts or emoluments whatsoever.

“Service” includes service under the Government of the Colony and service in a common service and such other service as the Governor may by notice in the Gazette direct to be service for the purposes of this Ordinance, if followed without break of service by service in the European

Establishment of provident fund.

3. (1) From the date of commencement of this Ordinance there shall be established a fund to be known as "the European Civil Service Provident Fund", which shall consist of—

- (a) contributions made by contributors;
- (b) amounts payable from general revenue in accordance with the provisions of section 6 of this Ordinance.

(2) All amounts contributed or paid to the fund shall be lodged with the Treasurer to the credit of the fund in a separate deposit account. The Treasurer shall, so far as may be practicable, invest such amounts on account of the Colonial Government in trustee stocks or in securities approved by the Governor in Council.

(3) The Treasurer shall submit to the Governor as soon as possible after the thirty-first day of December in each year a full statement showing the working of the fund and all claims thereon, and containing full particulars of all transactions connected with the working of the fund.

Contributions to fund from contributors.

4. Subject to the provisions of section 5 of this Ordinance—

or when becomes eligible to be a contributor after that date,

upon which such office becomes eligible to be a contributor after that date,

as from the date upon which such office becomes eligible to be a contributor,

(1) every male contributor shall, as from the date of commencement of this Ordinance, or in the case of a ^{male office who is appointed to the European local civil service} contributor appointed after that date as from the date of his appointment, make contributions to the fund at the rate of five per centum per annum of his salary;

(2) every female contributor shall, as from the date of commencement of this Ordinance, or in the case of a ^{female office who is appointed to the European local civil service} contributor appointed after that date as from the date of her appointment, make contributions to the fund at the rate of seven and one-half per centum per annum of her salary;

(3) such contributions shall be deducted monthly by the Treasurer from the salary payable to the contributor, and on being so deducted by the Treasurer shall be considered as paid into the fund on the last day of the month for which the salary was due and shall bear interest as from the first day of the month next following;

(4) a contributor shall, except when on leave prior to retirement or to the termination of his services, make contributions to the fund while on leave of

absence whether on full salary or on half salary; and while on leave on half salary such contributions shall be made as if the contributor were on leave of absence on full salary. A contributor may elect to contribute in respect of any period of leave of absence without pay, and any such contributions if paid otherwise than by deduction from salary shall bear interest as from the first day of the month next following the month in which such contributions are received into the fund.

5. No contributions to the fund shall be made by an officer— Who are not contributors.

- (a) who has completed less than twelve months continuous service; or
- (f) ~~(a)~~ who is under the age of eighteen years; or
- (g) ~~(a)~~ who is a learner, or an apprentice, or who is on probation, ~~or who is serving in an appointment which is subject to notice not exceeding one month on either side; or~~
- (g) ~~(a)~~ whose age on appointment ^{to the service} is fifty years or over; or
- (h) ~~(a)~~ who has attained the age of fifty-five years ~~or~~
- (c) ~~(a)~~ whose salary amounts to less than one hundred and fifty pounds per annum; or
- (d) ~~(a)~~ who is pensionable under the European Officers' Pensions Ordinance, 1927, or is otherwise eligible No. 11 of 1927. for pension under any other law of the Colony; or
- (e) ~~(a)~~ who is a married woman; or

6. From and after the commencement of this Ordinance there shall be paid to the fund from the general revenue of the Colony to the credit of each contributor— Contributions to fund from public revenue.

- (a) on the 30th June and 31st December in each year a contribution in accordance with the scale laid down in the Schedule to this Ordinance;
- (b) in the case of contributors who, prior to the date of commencement of this Ordinance, were in the service and ~~on the said date~~ ^{who continued} became contributors without break of service, such sum as would have been paid to the fund from the general revenue in respect of each such contributor under paragraph (a) of this section if this Ordinance had been in force at the date on which such contributors first joined the service;

(2) In calculating an officer's service under paragraph (a) of sub-section (1) of this section any service under paragraphs (b), (c) or (f) of that sub-section shall be taken into account.

- (c) on the 31st day of December in each year interest calculated on the amount standing in the fund to the credit of each contributor on the last day of each month during the period of twelve months immediately preceding. Such interest shall be at the rate of not less than three per centum per annum, to be fixed by order of the Governor in Council for the first year of the operation of this Ordinance within three months from the date of commencement of this Ordinance and thereafter not later than the 31st day of March in each year, and shall on the 31st day of December in each year be added to and become part of the principal :

Provided that such interest shall not be allowed for broken periods of a month :

Provided further that when a contributor's account is closed during the course of any year such interest shall be calculated to the end of the month preceding the date on which the account is so closed.

Rights of contributors against fund.

*7. (1) * Save as provided in para (c) of sub-section (3) of this section a*
 removed on grounds other than misconduct from the service shall, on such retirement, resignation, or removal, as the case may be, be paid from the fund a sum equal to the aggregate of the contributions which he has made to the fund together with interest thereon, and shall in addition be entitled to any contributions made to the fund from general revenue under section 6 of this Ordinance on his behalf, together with interest thereon :

Provided that a contributor who leaves the service before he has completed four years' continuous service as a contributor, unless he so leaves the service—

- (a) on the abolition of his office ;
- (b) on compulsory retirement for the purpose of facilitating improvement in the organization of the Department to which he belongs, by which greater efficiency or economy can be effected ;
- (c) on medical evidence to the satisfaction of the Governor that he is incapable by reason of some infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent ;
- (d) in the case of a male contributor on attaining the age of fifty-five years ; or

(e) in the case of a female contributor on attaining the age of fifty years,

for the purpose of getting married or

shall have no claim to receive from the fund a greater sum than the aggregate of the contributions made by him, with interest thereon.

(2) A contributor who, having been a contributor to the fund, is subsequently appointed to a pensionable office without break of service, shall be paid from the fund the aggregate amount of the contributions made by him to the fund with interest thereon but shall not receive any part of the contributions made from general revenue on his behalf or interest thereon. The amount of such contributions from general revenue, with interest thereon, shall be repaid to general revenue.

(3) ~~A female contributor who marries while in the service shall on such marriage~~ be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund together with interest thereon, and shall in addition be entitled to any contributions made to the fund from general revenue under section 6 of this Ordinance on her behalf, together with interest thereon, ~~provided that a female contributor who marries while in the service before she has completed four years' continuous service as a contributor shall on such marriage~~ be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf together with interest thereon. ~~A female contributor shall cease to be a contributor to the fund with effect from the end of the month immediately preceding her marriage.~~

and who on the date of such marriage has completed four or more years' continuous service shall on submitting to the Treasurer within three months of the date of her marriage proof of such marriage

who marries while in the service

(4) On the death of a contributor there shall be paid from the fund to his legal personal representative a sum equal to the aggregate contributions made to the fund by the contributor with interest thereon together with any contributions made from general revenue under section 6 of this Ordinance on his behalf together with interest thereon :

Provided that the Treasurer may make advances not exceeding fifty pounds in any one case to meet the expenses of the funeral of the deceased, or to give immediate relief to the widow or children or other dependants of the deceased, if in the opinion of the Treasurer such relief is required; and

(3) A female contributor who resigns from the service for the purpose of getting married and who at the date of ceasing to be a contributor has completed less than four years' continuous service shall be paid from the fund a sum equal to the aggregate of her contributions which she has made to the fund together with interest thereon and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf together with interest thereon, provided that a female contributor who marries while in the service before she has completed four years' continuous service as a contributor shall on such marriage be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf together with interest thereon.

any such payment made by the Treasurer shall be valid and effectual against any demand made upon the Treasurer or the Government by any other person in connexion with such payment.

- (5) (a) On the death of a contributor; or
- (b) on the termination of the service of a contributor, whether by retirement, transfer to the public service of another dependency, or otherwise; or
- (c) on the marriage of a female contributor,

his account shall be credited with interest up to the end of the month previous to the date of such death, termination, retirement, transfer, or marriage, and a notice stating the amount standing to the credit of the contributor shall be given to the person entitled to receive payment or to the contributor, as the case may be.

Dismissal of contributor.

8. If a contributor is dismissed from the service for misconduct or if he shall leave the service otherwise than in accordance with the regulations for the time being in force governing his appointment in the service, the Governor may withhold all or any part of the contributions made to the fund from general revenue or the interest thereon.

Sums due to Government.

9. Any sums due to Government by a contributor—
- (a) on his death, or
 - (b) on the termination of his services, whether by retirement, transfer to the public service of another dependency or otherwise, or
 - (c) on the appointment of the contributor to a pensionable office,

may be deducted from the amount then standing to his credit in the fund.

Gratuities to contributors.

The Governor may by notice in the Gazette exclude any person or class of persons from the operation of this Ordinance; and exempt any person or class of persons from all or any of the provisions of this Ordinance.

10. ~~In addition to any payment from the fund to which a contributor may have a claim under the foregoing provisions of this Ordinance it shall be lawful for the Governor in Council to grant from the public revenues of the Colony to a contributor who retires after continuous satisfactory service of not less than fifteen years a gratuity not exceeding the amount of one week's salary, based on the salary drawn at the date of retirement, for each completed year of service.~~

11. No moneys while in the fund and no rights acquired by a contributor under this Ordinance shall, while such contributor is in the service, be assignable or transferable or liable to be attached, sequestrated, or levied upon or in respect of any debt or claim whatsoever other than a debt due to the Government of the Colony. Payment from fund not assignable.

12. The Governor in Council may make regulations for the management of the fund and generally for carrying into effect the provisions of this Ordinance. Power to make regulations.

SCHEDULE.

CONTRIBUTIONS TO BE MADE FROM GENERAL REVENUE ON THE 30TH DAY OF JUNE AND THE 31ST DAY OF DECEMBER IN EACH YEAR.

(Section 6 (a) of the Ordinance.)

MALE CONTRIBUTORS.

- | | |
|---|--|
| A.—In respect of continuous service up to and including the tenth year: | A sum equal to the aggregate of the contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment. |
| B.—In respect of continuous service after the tenth year of service and up to and including the twentieth year: | A sum equal to 150 per centum of the aggregate of the contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment. |
| C.—In respect of continuous service after the twentieth year: | A sum equal to twice the aggregate contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment. |

Provided in cases B and C that, if the length of continuous service of a contributor reaches ten or twenty years, as the case may be, during the course of the period of six months immediately preceding the date of the next payment, the higher rate of contribution to be made from general revenue shall apply only to contributions made by the contributor in respect of service subsequent to the completion of ten or twenty years' continuous service, as the case may be.

FEMALE CONTRIBUTORS.

An amount equal to the aggregate of the contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment.

1

2

3

4

5

ORDINANCE No. XXVIII of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] **Date of assent:**

An Ordinance to Amend the Bank Ordinance.

27th August, 1934

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 Bank (Amendment) Ordinance, 1934, and shall be read as one with the Bank Ordinance (Chapter 94 of the Revised Edition), hereinafter referred to as the Principal Ordinance. **Short title.**

2. Section 32 of the Principal Ordinance as amended by the Bank (Amendment) Ordinance, 1927, is hereby further amended by deleting therefrom the words:— **Amendment of section 32 of the Principal Ordinance.**

“ to section one hundred and eight of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69) ” **No. 5 of 1927.**

and by substituting therefor the following words:—

“ of section one hundred and thirty-one of the Companies Act, 1929.”

3. Section 33 of the Principal Ordinance as amended by the Bank (Amendment) Ordinance, 1927, is hereby repealed and the following section is substituted therefor:— **Repeal and replacement of section 33 of the Principal Ordinance.**

“33. Every British bank being a company under the Companies Act, 1929, and having a share capital, shall forthwith forward or cause to be forwarded to the Registrar of Companies one copy of every return which such bank shall make in compliance with sections one hundred and eight and one hundred and ten of the said Companies Act, 1929.” **Return to be sent by British bank.**

ORDINANCE No. XXIX of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent.

[27TH AUGUST, 1934.]

An Ordinance to Amend the King's African Rifles Ordinance, 1932.

Date of commencement

27th August, 1934

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

Short title.

1. This Ordinance may be cited as the King's African Rifles (Amendment) Ordinance, 1934, and shall be read as one with the King's African Rifles Ordinance, 1932, hereinafter referred to as the Principal Ordinance.

No. 48 of 1932.

Amendment of section 2 of the Principal Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by deleting in the third and fourth lines of the definition therein of "imprisonment" the words "Imprisonment where no maximum or minimum term is stated, shall be for any term not exceeding two years".

Amendment of section 6 of the Principal Ordinance.

3. Section 6 of the Principal Ordinance is hereby amended by deleting the words "for life or for a term of not less than three years" in the penultimate line thereof.

Amendment of section 7 of the Principal Ordinance.

4. Section 7 of the Principal Ordinance is hereby amended in the following respects:—

(a) by deleting the last six lines of sub-section (2) thereof and by substituting therefor the following—

“shall on conviction by a court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned”;

(b) by inserting between the word "conviction" and the word "be" in the penultimate line of sub-section (3) thereof the words "by court-martial".

1934

King's African Rifles

No. XXIX

5. Section 9 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Repeal and replacement of section 9 of the Principal Ordinance.

“9. Every person subject to this Ordinance who strikes or uses or offers any violence to or uses threatening or insubordinate language to his superior officer shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.”

Striking or threatening a superior officer.

6. Section 10 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Repeal and replacement of section 10 of the Principal Ordinance.

“10. Every person subject to this Ordinance who disobeys any lawful command given by his superior officer, whether the same is given orally, in writing, or by signal, or otherwise, shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.”

Disobedience to superior officer.

7. Section 13 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Repeal and replacement of section 13 of the Principal Ordinance.

“13. (1) Every person subject to this Ordinance who commits any of the following offences, that is to say—

Desertion.

(a) deserts or attempts to desert His Majesty's service ;

(b) persuades or endeavours to persuade, procures or attempts to procure any person subject to this Ordinance to desert His Majesty's service,

shall on conviction by court-martial be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

(2) When any offender has fraudulently enlisted once or oftener he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as the corps to which he properly belongs and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly.”

Repeal and replacement of section 14 of the Principal Ordinance.

Fraudulent enlistment.

8. Section 14 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

“ 14. (1) Every person subject to this Ordinance who when belonging to any of His Majesty's Imperial, Dominion, Colonial or Protectorate Forces, without having first obtained a regular discharge therefrom, or otherwise fulfilled the condition enabling him to enlist, enlists in any other of His Majesty's Imperial, Dominion, Colonial or Protectorate Forces shall be deemed to have been guilty of fraudulent enlistment and shall, on conviction by court-martial, be liable to imprisonment or such less punishment as is in this Ordinance mentioned.

(2) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and, if he be convicted thereof, to punish him accordingly.”

Amendment of section 46 of the Principal Ordinance.

9. Section 46 of the Principal Ordinance is hereby amended by deleting the words “as defined by section 20” in the first and second lines of paragraph (d) of sub-section (1) C thereof.

Amendment of section 48 (2) of the Principal Ordinance.

10. Sub-section (2) of section 48 of the Principal Ordinance is hereby amended in the following respects :—

(a) by deleting the word “aggravation” in the fourth line thereof and by substituting therefor the word “seriousness”;

(b) by deleting the word “aggravated” in the marginal note thereto and by substituting therefor the word “serious”.

Repeal and replacement of section 51 (2) of the Principal Ordinance.

11. Sub-section (2) of section 51 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

“(2) Nothing in section 50 of this Ordinance, except sub-sections (9) and (10) thereof, shall apply to a field general court-martial; but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.”

12. Section 52 of the Principal Ordinance is hereby amended in the following respects :—

Amendment of section 52 of the Principal Ordinance.

(a) by adding to sub-section (1) thereof the following paragraph :—

“(c) in the case of a field general court-martial an officer having authority to confirm the finding or sentence of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part.”;

(b) by inserting between sub-section (2) and sub-section (3) thereof the following additional sub-section :—

“(2)A. Subject to the provisions of this Ordinance with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorized to confirm the same.”

13. Sub-section (3) of section 60 of the Principal Ordinance is hereby amended in the following respects :—

Amendment of section 60 (3) of the Principal Ordinance.

(a) by deleting the words “aggravated offence” in the first and second lines thereof and by substituting therefor the words “a serious offence”;

(b) by deleting the word “aggravated” in the marginal note thereto and by substituting therefor the word “serious”.

ORDINANCE No. XXX of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent.

[27TH AUGUST, 1934.]

An Ordinance to Legalize the Payment of a Gratuity and a Reduced Pension to Horace Blackwell, Esquire.

Date of commencement

27th August, 1934

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

Short title.

1. This Ordinance may be cited as the Blackwell Pension Ordinance, 1934.

Amount of gratuity and reduced pension to H. Blackwell.

2. Anything in the European Officers' Pensions Ordinance, 1927, and the European Officers' Pensions (Consolidation) Regulations, 1930, to the contrary notwithstanding, it shall be lawful for the Treasurer to pay out of the revenues of the Colony to Horace Blackwell, Esquire, such gratuity and reduced pension as would have been payable to him if he had exercised his option to receive a gratuity and a reduced pension in manner provided by Regulation 16 of the European Officers' Pensions (Consolidation) Regulations, 1930.

ORDINANCE No. XXXI of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] Date of assent.

An Ordinance to Amend the Asiatic Widows' and Orphans' Pension Ordinance, 1927.

27th August, 1934

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 Asiatic Widows' and Orphans' Pension (Amendment) Ordinance, 1934, and shall be read as one with the Asiatic Widows' and Orphans' Pension Ordinance, 1927, hereinafter referred to as the Principal Ordinance. Short title.
No. 20 of 1927.
2. Sub-section (4) of section 4 of the Principal Ordinance as repealed and replaced by the Asiatic Widows' and Orphans' Pension (Amendment) Ordinance, 1931, is hereby amended by the insertion of the words "by order" between the words "Governor" and "may" which occur in the first and second lines thereof. Amendment of section 4 of the Principal Ordinance.
No. 10 of 1931.
3. (1) Subject to the exceptions contained in sections 4 and 5 of the Principal Ordinance any Asiatic officer who was in or selected for appointment to the service of the Government of the Tanganyika Territory on the first day of January, 1933, and who, in consequence of the amalgamation of the postal and telegraphic services of the Colony and the Tanganyika Territory, was on that date transferred to the amalgamated postal and telegraph department of the Colony and the Tanganyika Territory may, if at the time of election hereinafter referred to he is still in the service of the said amalgamated department, by a notice addressed to the Secretary, Asiatic Widows' and Orphans' Pension Fund, and received by the Secretary within three months from the coming into force of this Ordinance, elect to become a contributor. Officers in amalgamated posts and telegraphic service may elect to contribute.

Payment of
arrears of
contributions.

(2) Any such Asiatic officer shall on such election aforesaid pay to the fund, within a time to be specified by the Board, in a lump sum, or in the discretion of the Board in instalments, within a period not exceeding six months, the arrears of contribution together with interest on such lump sum at the rate of 6 per centum per annum in respect of the period from the first day of January, 1933, to the first day of the month immediately preceding the month in which his notice was received by the Secretary; and thereafter such officer shall contribute as from the first day of the said month in which his notice was received by the Secretary.

Officers on
marriage
to become
contributors.

(3) Any Asiatic officer who was, on the first day of January, 1933, unmarried and under the age of twenty-one years and who was in or selected for appointment to the service of the Government of the Tanganyika Territory, and who, in consequence of the amalgamation of the postal and telegraphic services of the Colony and the Tanganyika Territory, was on that date transferred to the amalgamated postal and telegraph department of the Colony and the Tanganyika Territory, shall on becoming married or on reaching the age of twenty-one years forthwith become a contributor.

(4) For the purposes of the Principal Ordinance the officers referred to in this section shall be deemed to be in the service of the Government of the Colony.

ORDINANCE No. XXXII of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] **Date of assent.**

An Ordinance to Provide for the Removal and Settlement of Laibons.

By Proclamation

Date of commencement

WHEREAS there are now living among the Lumbwa Tribe in the Nyanza Province considerable numbers of Laibons, a people alien alike to the Province and to its inhabitants :

AND WHEREAS the Lumbwa tribe has petitioned the Government of Kenya that the said Laibons be removed from among them :

AND WHEREAS it is deemed necessary for the preservation of peace and order and in the interests of good government that the said Laibons should be so removed to and settled in some selected area :

AND WHEREAS an area suitable for such purpose has now been selected :

AND WHEREAS it is expedient to make provision for the removal to and settlement in such area of the said Laibons :

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 Laibons Removal Ordinance, 1934, and shall come into operation upon such date as the Governor shall by proclamation appoint. **Short title and commencement.**

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

“Laibon” means an orkoyot ;

“orkoyot” means an adult male member of the Talai clan resident in the South Lumbwa District ;

“settlement area” means the area referred to in section 3 of this Ordinance ;

“removal” means the removal to the settlement area and the compulsory settlement therein referred to in section 4 of this Ordinance ;

“Provincial Commissioner” means the Provincial Commissioner, Nyanza Province, or any other officer duly authorized to act in such appointment.

Establishment of a Laibon settlement area.

3. There shall be set apart for the use of the Laibons a settlement area as defined in the Schedules to this Ordinance or such other area as the Governor may by proclamation declare to be a settlement area.

Power of Provincial Commissioner to remove Laibons.

4. Upon the coming into operation of this Ordinance the Provincial Commissioner shall cause all adult male Laibons in the Nyanza Province, together with all the members of their families, to be removed to and compulsorily settled in the settlement area.

Laibons to be restricted to settlement area.

5. Every Laibon and every member of such Laibon's family so removed to and settled in the settlement area shall thereafter be restricted in his movement to the boundaries of such area and shall be and is hereby prohibited from moving out of such area at any time unless he is in possession of a written pass granted to him in that behalf by a Provincial Commissioner, or some officer authorized by him, in accordance with the provisions of section 14 of this Ordinance.

Offences; penalties.

6. If any person removed and settled under the provisions of section 4 of this Ordinance leaves the settlement area without the written permission of the Provincial Commissioner or of some officer authorized by him (the burden of proving the possession of such permission being on the person charged) such person may be arrested without warrant and shall be guilty of an offence and shall be liable—

(a) on a first conviction, to imprisonment for a period not exceeding one year;

(b) on a second conviction, to imprisonment for a period not exceeding two years;

(c) on any subsequent conviction, to imprisonment for a period not exceeding three years,

or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

Registers.

7. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families to be prepared by the District Commissioners or such other persons as he may appoint and shall for that purpose cause notices to be published calling upon all Laibons—

(a) to appear at times and places therein specified before the persons appointed by him in that behalf;

- (b) to give to such persons such information as may be necessary to enable the registers to be prepared ; and
- (c) to allow their finger impressions to be recorded for the purposes of this Ordinance.

8. (1) The registers when completed shall be retained in the custody of the Provincial Commissioner or of an officer authorized by him. Custody of registers.

(2) Save in the case of a successful appeal under section 9 of this Ordinance no addition to, or alteration or removal of any entry in the registers shall be made except by the direction in writing of the Provincial Commissioner. Alterations.

9. (1) Any person who, on the ground that he is not a Laibon, is aggrieved by any entry relating to him or his family made or proposed to be made in a register may appeal to the Provincial Commissioner against such entry. Appeals.

(2) Every such appeal shall be lodged within a period of seven days next after the date of the making of such entry in the register.

(3) No further action shall be taken for the purpose of effecting the removal of any person so appealing until a decision has been reached upon his appeal.

(4) On any such appeal the burden of proving that the person so appealing is not a Laibon shall lie on that person.

(5) On any such appeal the Provincial Commissioner may hear such witnesses and call for such documents as he thinks fit and may, if it is deemed necessary, take evidence on oath.

10. For the purposes of carrying out the removal of the Laibons and their families it shall be lawful for the Provincial Commissioner— Power of Provincial Commissioner relating to removal.

- (a) to establish concentration camps and to collect and detain the Laibons and their families therein ;
- (b) to organize the compulsory movement of the Laibons and their families, flocks and herds to the settlement area ;
- (c) to arrange for the guarding of the Laibons and their families in concentration camps, on the move, or at temporary halting places, and for the taking of due precautions to prevent their escape ;

(d) to issue, generally for the foregoing, and for all the purposes of this Ordinance, such directions as he may deem necessary.

Provincial Commissioner's order to be sufficient authority.

11. An order in writing of the Provincial Commissioner relating to any matter necessary for the carrying into effect of any of the purposes of this Ordinance shall be sufficient authority to the person to whom it is directed or delivered for execution to receive and detain the person or persons therein described and to remove him or them in custody to the place named in the order.

Persons removed to be deemed to be in custody.

12. All persons ordered under the provisions of this Ordinance to be detained in any camp or other place or to be moved from one place in the Colony to another shall be deemed during such detention or removal to be in lawful custody, and the law for the time being in force in the Colony relating to persons in custody shall apply to all such persons.

Power of Provincial Commissioner to issue directions.

13. The Provincial Commissioner if he considers it expedient, may from time to time issue under his hand, in respect of all or certain specified Laibons in the settlement area, all or any of the following directions :—

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- (a) a direction that they report themselves as he may require at fixed intervals of time;
- (b) a direction that they shall notify their place of residence within such area and any change of and any absence or intended absence from such place of residence;
- (c) a direction that the carrying of any arms (as defined by the Native Arms Ordinance) by them be restricted or prohibited;
- (d) a direction that they be restricted in their movements to any specified locality in such area or be settled in any specified place of residence in such area;
- (e) a direction that the holding by them of public meetings of any kind be restricted or prohibited.

Power of Provincial Commissioner to grant passes and to revoke orders for removal.

14. Notwithstanding the restriction and prohibition in section 5 of this Ordinance the Provincial Commissioner may in his discretion—

- (a) grant passes to persons in the settlement area, giving permission to leave the area; such passes shall be

signed by the Provincial Commissioner or by officers authorized by him, and shall be in such form and valid for such periods and subject to such conditions as he shall think fit; and

(b) by writing under his hand vary or revoke in its application to any person or persons in the settlement area any order of removal and settlement made by virtue of the provisions of this Ordinance.

15. It shall be lawful for the Provincial Commissioner to take all such measures and to issue all such directions as he shall deem necessary for the permanent settlement of the Laibons and their families in the settlement area.

Measures relating to settlement of Laibons.

16. Save as provided in section 9 of this Ordinance, no appeal shall lie against any removal or compulsory settlement made in accordance with section 4 of this Ordinance.

No appeal from removal save as in section 9.

17. No prosecution, suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Ordinance, and no compensation shall be payable to any person for any act done in good faith under the provisions of this Ordinance.

Protection for persons acting under the Ordinance.

18. The Governor in Council may make Rules for the carrying out of the purposes of this Ordinance and may in such Rules prescribe penalties for breaches thereof.

Rules.

19. Any person who without lawful excuse, the burden of proving which shall lie upon him—

Penalties.

- (a) fails to appear in compliance with any notice issued under section 7 of this Ordinance; or
- (b) intentionally withholds or omits to furnish any information required under that section; or
- (c) when required to furnish information under that section, furnishes as true any information which he knows or has reason to believe to be false; or
- (d) refuses to allow his finger impressions to be taken by any person in accordance with section 7; or
- (e) fails to obey any order or direction given, in accordance with the provisions of section 10 or section 13 of this Ordinance, by the Provincial Commissioner or by any officer authorized by him; or

(f) in any way obstructs or interferes with any officer or any person duly authorized to exercise any right or power or to execute any duty under this Ordinance,

may be arrested without warrant, and shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding fifteen pounds or to both such imprisonment and fine.

Saving.

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Native Lands Trust Ordinance, 1930, and any Ordinance amending the same.

No. 9 of 1930.

FIRST SCHEDULE.

Commencing at a cairn on the shore of Lake Victoria at Mungeri Bay;

thence in an easterly direction by a line of cairns to the summit of Bukini Hill;

thence along the ridge in a north-easterly direction by a line of cairns to point 6,380 feet;

thence down the stream bed immediately south of that point in a south-easterly direction to a cairn on the track passing through point 3,920 feet;

thence by a line of cairns following that track to a cairn on the right bank of the Lambwe River;

thence by a line of cairns following the right bank of that river to a cairn at the head of the Lambwe Valley;

thence in a south-westerly direction by a line of cairns to a cairn on the lake shore at Ukudu point;

thence by the lake shore to the point of commencement.

SECOND SCHEDULE.

The islands of Mbaiyu, Mkai, Kiua, Seyusi and Mageta.

ORDINANCE No. XXXIII of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] Date of assent.

An Ordinance to Amend the Land and Agricultural Bank (Amendment) Ordinance, 1933.

27th August, 1934

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, 1934, and shall be read as one with the Land and Agricultural Bank (Amendment) Ordinance, 1933, hereinafter referred to as the Principal Ordinance. Short title.
No. 4 of 1933.

2. Sub-section (1) of section 2 of the Principal Ordinance is hereby amended by the substitution of the word "Bank" for the word "Board" wherever such word occurs therein. Amendment of section 2 of the Principal Ordinance.

ORDINANCE No. XXXIV of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent. [27TH AUGUST, 1934.]

An Ordinance to Amend the Agricultural Advances Ordinance, 1930.

Date of commencement *1st January, 1934*

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

- Short title.** 1. This Ordinance may be cited as the Agricultural Advances (Amendment) Ordinance, 1934, and shall be read as one with the Agricultural Advances Ordinance, 1930, hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into operation on the first day of January, 1934.
- No. 12 of 1930.**
- 2.** In this Ordinance—
- Interpretation** “agents” means the Land and Agricultural Bank of Kenya ;
“Central Board” means the Central Agricultural Advances Board established under section 3 of the Principal Ordinance ;
“participant” means a debtor to the Central Agricultural Advances Board in respect of advances made to him.
- Transfer of powers of secretary to Central Board.** 3. The powers, duties and obligations of the Secretary of the Central Board are hereby transferred to the agents.
- Central Board may waive priority.** 4. The Central Board may waive and postpone in favour of the agents the priority of any charge whether statutory or otherwise over land held by them under the provisions of the Principal Ordinance.
- Agents may re-issue proceeds of crops, etc., from advances.** 5. The agents may re-issue to approved participants as fresh advances the proceeds of any crops, produce or live stock sold which would otherwise be applied to the payment of interest or charges or to repayment of capital advances provided

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that any moneys so re-issued shall be allocated only to purposes for which advances have already been made under the Principal Ordinance.

6. The agents may in their discretion agree to and be a party to any approved arrangement made between a participant and a merchant firm making anticipatory advances against crops reaped or to be reaped under which the proceeds of such crops shall be shared in agreed proportions by the parties.

Agents may be party to arrangement with merchant firm.

ORDINANCE No. XXXV of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent.

[27TH AUGUST, 1934.]

An Ordinance to Give Further Powers to the Supreme Court with respect to the Recovery of Money secured by Mortgages or Charges and Similar Matters.

Date of commencement

27th August, 1934

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

Short title.

1. This Ordinance may be cited as the Agricultural Mortgagors' Relief Ordinance, 1934.

Interpretation.

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

“instrument” means any document evidencing any mortgage, or agreement of sale or purchase in respect of or affecting immovable property ;

“mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of money is granted over immovable property or any interest therein, and includes an agreement for sale and purchase of immovable property where payment of the unpaid purchase money and interest thereon is secured on such property and also includes an equitable mortgage by deposit of title deeds and any document by which the duration of the mortgage is extended or by which any provision of the mortgage is varied ;

“mortgagor” means a person liable under the provisions of an instrument, and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition or agreement expressed or implied in the instrument, whether such guarantee is expressed in the instrument or in any other document, and also includes any person against whom a mortgagor has a legal or equitable right of indemnity in respect of any liabilities under the instrument ;

"mortgagee" means the person entitled to the benefit of the security of the instrument, and includes every person whose powers are restricted by the provisions of this Ordinance;

"principal money" includes principal money which by the terms of any instrument is payable in one sum or by instalments with or without interest payments added thereto or combined therewith, but does not include money payable as rent.

3. (1) The Crown shall be bound by the provisions of this Ordinance, and the word "person" where used in this Ordinance shall include the Crown. Application of Ordinance.

(2) This Ordinance shall not apply to—

- (a) any instrument affecting immovable property which is not occupied or used mainly for the purposes of agriculture, which term shall for the purposes of this Ordinance be deemed to include grazing and stock raising;
- (b) money payable in respect of premiums of insurance or taxes or arrears of taxes, including arrears which may under any instrument be capitalized or added to or form part of the principal money payable thereunder, and whether the same is payable before or after the commencement of this Ordinance;
- (c) simple interest or money payable in respect of interest or arrears of interest which may under the terms of any instrument be payable under a plan by which interest and principal payments are combined, or if in arrears be capitalized or added to or form part of the principal money payable thereunder, and whether the same is payable before or after the commencement of this Ordinance;
- (d) any instrument affecting immovable property situate outside the Colony;
- (e) any instrument affecting immovable property made or created after the commencement of this Ordinance.

4. The provisions of this Ordinance shall apply to an instrument under the Chattels Transfer Ordinance, 1930, given on the security of crops, stock and other chattels normally used in the course of farming operations as if such instrument were an instrument affecting immovable property. Ordinance to apply to Chattels Transfer Ordinance. No. 24 of 1930.

Prohibition.

5. (1) Notwithstanding the provisions of the Indian Transfer of Property Act, 1882, as applied to the Colony, it shall not be lawful for a mortgagee under a mortgage to which this Ordinance applies or any other person—

- (a) to exercise (except in respect of property which the mortgagor has abandoned) any power of sale, rescission, or entry into possession conferred by any such mortgage or by statute; or
- (b) to issue or to be concerned in the issue of any process of execution in pursuance of any judgment, decree, or order of any court in its civil jurisdiction obtained against the mortgagor after the commencement of this Ordinance in respect of any covenant, condition or agreement expressed or implied in the mortgage, or to continue or to be concerned in the continuance of any such process of execution;
- (c) to file a bankruptcy petition against the mortgagor in respect of any debt arising out of any covenant, condition or agreement expressed or implied in the mortgage,

otherwise than subject to and in accordance with the provisions of this Ordinance.

(2) For the purposes of this Ordinance, the exercise of a power of sale shall be deemed to be completed when the vendor becomes bound by an agreement or contract of sale, and the onus of proving that any immovable property has been abandoned by a mortgagor shall rest upon the mortgagee.

Notice by mortgagee of intention to exercise powers.

6. (1) A mortgagee before proceeding to do any such act or exercise any such power as is defined in the last preceding section shall give to the mortgagor notice in writing of his intention to do such act or exercise such power.

(2) Such notice shall contain an address for service, and shall be signed by the mortgagee, or by some duly authorized attorney or agent of the mortgagee, and shall be deemed to be duly given if delivered to the mortgagor personally, or if posted by registered letter addressed to the mortgagor at his last known place of abode in the Colony. A notice so posted shall be deemed to have been given seven days after the time when the registered letter would be delivered in the ordinary course of post.

(3) If the mortgagor does not within one month after the giving of such notice apply to the Supreme Court for relief as hereinafter provided, and serve a copy of such application on the mortgagee, and on the Registrar of Titles, the mortgagee may on the expiration of the said month proceed to do such act or exercise such powers as aforesaid.

(4) If the mortgagor makes such application and serves a copy thereof in accordance with the last preceding sub-section the mortgagee shall not do such act or exercise such power until such application has been withdrawn or has been disposed of by the Supreme Court, otherwise than subject to and in accordance with any order made by the Supreme Court as hereinafter provided.

7. (1) An application by a mortgagor under this Ordinance shall be by motion on notice supported by affidavit, and shall state the date on which such notice as aforesaid was given by the mortgagee, the specific grounds on which relief is sought and whether copies of the application have been served on the mortgagee and on the Registrar of Titles. Procedure.

(2) An application under this Ordinance may be made to and disposed of by a Judge in Chambers.

(3) The Judge may give directions as to the service of notice of the hearing of the application upon any person whom he deems a proper party to the proceedings, and may adjourn the hearing for that purpose, or he may, if he considers that service of the notice would occasion useless or unnecessary expense or delay, dispense with service of notice of the application upon any party who appears to have abandoned his interest in the immovable property.

(4) No appeal shall lie from any order made under this Ordinance.

8. (1) In determining whether relief against the doing of any act or the exercise of any powers as aforesaid by the mortgagee shall be granted to the mortgagor, the Supreme Court shall take into consideration— Matters to be considered by Supreme Court on application by mortgagor.

(a) the effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee;

(b) the inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest;

- (c) the conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage;
- (d) any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof;
- (e) the extent to which any default by the mortgagor has been caused by any economic or financial conditions affecting trade or industry in the Colony;
- (f) whether any relief granted by the court pursuant to this Ordinance would be reasonably likely to enable the mortgagor, having regard to his circumstances and the conditions mentioned in the last preceding paragraph, to meet his liabilities under the mortgage within such time as the court deems reasonable;
- (g) any other relevant consideration.

Nature of relief that may be granted by court.

(2) If the court, being satisfied regarding the matters mentioned in the first sub-section of this section and, having regard to all other relevant considerations is of opinion that relief should be granted to the mortgagor, it may, in its absolute discretion, order that the mortgagee shall not, before a date specified in such order (being not later than twelve months after the date of the mortgagor's application for relief), do any act or exercise any power mentioned in section 5 of this Ordinance :

Provided that no such order shall operate to postpone the exercise of any right or remedy to a date subsequent to the expiry of this Ordinance.

Scope of order.

9. Subject to the provisions of this Ordinance, the order may be upon such terms, conditions and limitations, including the giving of any undertaking, the depositing in court or otherwise of any security, the appointment of a receiver, the granting of an injunction, and the reservation of leave to apply to vary the same as the Judge may deem proper.

Registration of court orders.

10. (1) Every order of the court made under this Ordinance shall be registered by the mortgagor with the Registrar of Titles within seven days of the making of the order and no fee shall be chargeable in respect of such registration.

(2) The Registrar of Titles shall cause a register to be kept containing the particulars of all orders so registered and such register shall, at all reasonable times, be open to inspection by any person without fee.

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11. When an order postponing the exercise of any right or remedy has been made under any of the foregoing provisions of this Ordinance and the mortgagor—

(a) fails to register such order as required by section 10 (1) of this Ordinance; or

(b) during the time of such postponement fails or neglects to pay interest on or within forty-two days after the date on which such interest becomes due,

such order shall thereupon become null and void and the mortgagee may take action for the recovery of the principal sum and interest due in such manner as he may think fit and may do such acts and exercise such powers as he might have done or exercised if this Ordinance had never been passed.

Order granting relief to be null and void if mortgagor fails to register or pay interest.

12. Notwithstanding the provisions of section 3 (2) (c) and section 8 of this Ordinance it shall be lawful for the court, in any case in which it is satisfied that, although the interest reserved by any instrument has not been paid in full, interest has been paid at a rate which in all the circumstances of the case the court deems to be reasonable, not in any case being less than half the rate reserved by the instrument, and that the covenants and provisions of the mortgage have been otherwise observed, to order that the amount due and unpaid in respect of interest be added to the mortgage or other debt, and the amount so added be deemed to be part of the principal money and shall carry interest as from the date of its being so added at the rate reserved under the instrument.

Power to add interest due to mortgage debt.

13. In any proceedings under this Ordinance no order shall be made for the payment of costs by a mortgagee unless the court certifies that in its opinion the conduct of the mortgagee has been for the purpose of causing delay or has in any other respect been vexatious.

Costs.

14. Where a suit, action or other proceeding has been taken in court on any instrument, then upon the trial of any issue arising in the suit, action or proceedings, the trial Judge, whether an application has or has not been made under this Ordinance, may make an order as provided for under this Ordinance.

Order at trial.

15. The powers conferred by this Ordinance shall be in addition to and not in substitution for or derogation of any other powers of the court or Judge.

Powers to be additional.

Procedure.

16. Proceedings under this Ordinance shall, so far as not expressly provided for by this Ordinance, be conducted in accordance with the ordinary practice of the Supreme Court in dealing with such matters.

**Effect of
contravention
of Ordinance.**

17. Every decree, judgment, or order, foreclosure or forfeiture, made, declared or taken advantage of, distress levied, possession taken or sale by a mortgagee made in contravention of this Ordinance or of any order made thereunder shall be absolutely null and void.

**Duration of
Ordinance.**

18. This Ordinance shall continue in force until the thirty-first day of December One thousand nine hundred and thirty-six and shall then expire.

ORDINANCE No. XXXVI of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] Date of assent.

An Ordinance to Amend the Native Lands Trust Ordinance, 1930.

By Notice

Date of commencement.

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

1. This Ordinance may be cited as the Native Lands Trust (Amendment) Ordinance, 1934, and shall be read as one with the Native Lands Trust Ordinance, 1930, hereinafter referred to as the Principal Ordinance, and shall come into operation on such date as the Governor by notice in the Gazette shall determine. Short title.
No. 9 of 1930.

2. The Principal Ordinance is hereby amended by inserting therein, next below the enacting formula, the following words :— Amendment
of the
Principal
Ordinance.

“ PART I.—GENERAL PROVISIONS.”

3. The Principal Ordinance is hereby amended by the insertion therein, immediately after section 5, of the following section as section 5A :— Local Board
for purposes
of Part II.

“ 5A. (1) Notwithstanding the provisions of the last preceding section, a Local Board for all or any of the purposes of Part II of this Ordinance shall consist of—

(a) the District Commissioner as Chairman ; and

(b) four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner : Provided that one of the members selected by the Provincial Commissioner shall be a member of the Council who

was appointed to such Council from amongst the persons nominated by the natives in accordance with the provisions of section 20 of the Native Authority Ordinance.

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(2) The Chairman and two other members shall form a quorum."

Repeal of section 15 (1) (g) of the Principal Ordinance.

4. Paragraph (g) of sub-section (1) of section 15 of the Principal Ordinance is hereby repealed.

Power of Governor to exclude temporarily from Native Reserve land required for mining leases.

5. The Principal Ordinance is hereby amended by the insertion therein, immediately after section 15, of the following section as section 15A :—

"15A. (1) When application has been made for the grant of a mining lease of land in a Native Reserve such land may be temporarily excluded from the Native Reserve by the Governor if the natives concerned and the Local Native Council have expressed a desire that this procedure be followed in lieu of setting-apart the land in accordance with the provisions of Part II of this Ordinance. Every proposal for such temporary exclusion shall first be laid before the Provincial Commissioner who shall report thereon to the Central Board and the Board shall consider the practicability or otherwise of the proposal, having regard to the provisions of sub-section (2) of this section, and shall thereafter make its recommendation to the Governor whose decision shall be final.

(2) In every case where land is temporarily excluded from a Native Reserve under this section there shall be added temporarily to such Reserve for the currency of the term of such exclusion an area of unalienated Crown land equal in size and, so far as may be, in agricultural value to the area which has been so excluded. Any native who is disturbed in his occupation of land by such exclusion may make application for and receive compensation in respect of such disturbance as provided in section 33 of this Ordinance and shall in addition to receiving such compensation be entitled to reside, together with his family, in the area which has been temporarily so added to the Reserve.

(3) When any native entitled to compensation as provided in the last preceding sub-section has satisfactorily established a claim, in accordance with section 34 of this

Ordinance, to be a private right-holder in respect of a portion of any land temporarily excluded under this section, he shall be entitled, in addition to compensation for disturbance to receive compensation as a private right-holder as provided in section 34 of this Ordinance :

Provided always that any such native may at his option, and in lieu of receiving such compensation as a private right-holder, elect to reside with his family, during the term of the temporary exclusion, in the area which has been temporarily added to the Reserve.

(4) Notwithstanding any provision to the contrary in the Mining Ordinance, 1933, the term for which land is temporarily excluded under this section shall be deemed to run concurrently with the term of the mining lease granted in respect of such land, and, save when the mining lease shall have been renewed in accordance with the provisions of the said Mining Ordinance, 1933, the term of such temporary exclusion shall be deemed to have expired automatically upon the expiry of the mining lease. Where the mining lease is renewed the term for which the land is temporarily excluded shall be deemed also to have been renewed for a like term as the renewal of the mining lease. No. 61 of 1933.

(5) Upon the final termination of a mining lease in respect of which land has been temporarily excluded, the land so excluded shall forthwith revert to and again become part of the Reserve and thereupon any land temporarily added to the Reserve by reason of such temporary exclusion shall cease to be part of the Reserve and shall revert to the Crown :

Provided that in any case where the Central Board is satisfied that the agricultural value of any portion of the area temporarily excluded has been permanently impaired by reason of mining operations conducted thereon during the currency of the mining lease the Governor, on the recommendation of the Board, may add permanently to the Reserve from the land temporarily added thereto an area of land equal in size and so far as may be in agricultural value to the portion of the Reserve which has been so impaired in value.

(6) No mining lease shall be granted in respect of any land which is to be temporarily excluded in accordance with this section unless and until all compensation arising by reason of such exclusion has been duly paid to the

proper authority. Notice of every temporary exclusion of land and of every temporary addition to a Reserve consequent thereon and of every renewal and expiration of any such exclusion and addition shall be published in the Gazette."

6. The Principal Ordinance is hereby amended by adding, next after section 24 thereof, the following words and additional sections :—

" PART II.—SETTING-APART AND MINING LEASES.

Power to set-apart land in Native Reserves for mining development.

25. (1) Upon application made to him in writing, and notwithstanding anything contained in Part I of this Ordinance or in any other law for the time being in force, a Provincial Commissioner may, subject to the provisions of this Part, set-apart land in any Native Reserve within his Province for the purpose of developing the mineral resources of such Native Reserve.

(2) Every such application shall be accompanied by a plan, based on a survey by a licensed surveyor, of the area to which the application relates and shall be addressed to the Provincial Commissioner through the Commissioner of Mines.

Procedure as to setting-apart land under ten acres in extent.

26. (1) When application has been duly made to him in respect of the setting-apart from a Native Reserve of land not exceeding ten acres in area the Provincial Commissioner, subject to the conditions of this Ordinance and with the approval of the Local Board concerned, may set-apart such land.

(2) Where the area of land proposed to be set-apart does not exceed ten acres in extent and the Provincial Commissioner supports the proposal but the Local Board concerned object to the setting-apart of such area, then, and in such case, such area shall not be set-apart unless and until the approval of the Governor to such setting-apart has been obtained.

(3) Where an application to set-apart an area of land not exceeding ten acres in extent is made to the Provincial Commissioner and he does not support such application, the application shall be forwarded for the consideration of the Local Board concerned. Should the Local Board support the proposal, the application shall be forwarded for the consideration of the Governor.

(4) Where an application to set-apart an area of land not exceeding ten acres in extent is not supported by either the Provincial Commissioner or the Local Board concerned the Provincial Commissioner shall inform the applicant that the application has been refused. The applicant may appeal in writing to the Governor against such refusal within twenty-one days of the date on which he is notified thereof.

(5) The decision of the Governor upon any of the matters referred to him under this section shall be final.

27. (1) Where any application is made to the Provincial Commissioner under this Ordinance to set-apart an area of land exceeding ten acres in extent from a Native Reserve, such application shall in every case, subject to the provisions of section 28 hereof and after being submitted to the authorities set out in paragraphs (b) and (c) of section 29 of this Ordinance, be referred to the Central Board.

Powers of Central Board as to applications to set-apart land exceeding ten acres in extent.

(2) If the Central Board approves of such application it shall grant the application.

(3) If the Central Board does not approve of such application it shall submit the application to the Governor together with its reasons for such non-approval, and the Governor shall refer the matter to the Secretary of State whose decision shall be final.

28. The Central Board may, by notice published in the Gazette, delegate to the Chief Native Commissioner the power to grant the applications referred to in the last preceding section where the area of land to be set-apart does not exceed fifty acres in extent, but the Chief Native Commissioner shall not refuse any such application without the consent of the Central Board. If the Central Board supports the refusal of the Chief Native Commissioner it shall submit the application to the Governor for reference to the Secretary of State as provided for in the last preceding section.

Power of Central Board to delegate.

Conditions to be fulfilled prior to approval of setting-apart.

29. Approval of the setting-apart of land under the provisions of this Ordinance shall in no case be granted unless and until all the following conditions have been fulfilled—

- (a) prior to the making of the application to the Provincial Commissioner for setting-apart an application for the grant of a mining lease in respect of such land must have been duly lodged with the Commissioner of Mines ;
- (b) the proposal to set-apart such land must have been brought to the notice of the natives concerned and to the notice of the Local Native Council having jurisdiction over such area, and such natives and such Local Native Council must have had an opportunity of expressing their views upon the proposal ;
- (c) the Local Board concerned must have been consulted and representatives of the location or section concerned must have been co-opted as additional members of the Local Board for the purpose of expressing their views upon the proposal.

Compensation and rent to be paid prior to setting-apart.

30. The Provincial Commissioner shall not gazette the setting-apart of any land under this Ordinance unless and until the lump sums of money payable by way of compensation and commuted rent in accordance with sections 33, 34 and 37 of this Ordinance and calculated as herein-after provided for have been deposited with the District Commissioner.

Setting-apart to be gazetted.

31. When an application for setting-apart land has been approved by the proper authority, as provided in this Ordinance, and the requirements of the last preceding section hereof have been duly complied with and all the prescribed fees have been paid, the Provincial Commissioner shall publish in the Gazette a notice of such setting-apart and shall specify in such notice the boundaries of the area so set-apart. The land comprised in such area shall be deemed to be set-apart on, and not before the date of the publication of such notice.

The provisions of this section shall be in addition to and not in derogation of the provisions of the Mining Ordinance, 1933.

32. All sums of money due to be deposited or paid under this Ordinance as compensation or commuted rent in respect of land to be set-apart shall in every case be assessed prior to the gazetting of the setting-apart.

Compensation, etc., to be assessed prior to setting-apart.

33. (1) Where an application to set-apart has been approved by the proper authority under this Ordinance the District Commissioner shall notify the natives in the area concerned that such application has been made and approved.

Compensation for disturbance and other loss.

(2) Any native who, though not a private right-holder within the meaning of section 34 of this Ordinance, is likely to be prejudicially affected by a proposal to set-apart any land under this Ordinance, shall be entitled to apply for compensation to the District Commissioner concerned in respect of disturbance or of any other loss or expense likely to be caused by such setting-apart and the District Commissioner shall forward forthwith to the Provincial Commissioner the details of all such applications.

(3) The compensation payable to any native upon the granting of any such application by the Provincial Commissioner shall include full compensation for any hut or huts or other buildings destroyed or vacated and for any growing crops which the native is unable to reap or which are destroyed or damaged.

(4) The amount of compensation to be awarded to any native under sub-section (1) of this section shall be assessed by the Provincial Commissioner after consultation with the Local Board concerned and shall after such assessment be deposited by the applicant for setting-apart with the District Commissioner. The District Commissioner shall be responsible for notifying all persons concerned of the Provincial Commissioner's award.

(5) Any person aggrieved by the award of the Provincial Commissioner under this section may, within twenty-one days from the date of the making of such award, appeal in writing through the Provincial Commissioner to the Governor, whose decision shall be final. The Governor in special cases and in his absolute discretion may extend the time for making any such appeal.

(6) Where no such appeal has been lodged or where such appeal has been determined by the Governor the District Commissioner shall from the sum so deposited and upon instructions from the Provincial Commissioner pay the sums finally assessed to the persons entitled thereto.

Compensation
for private
right-holders.

34. (1) In any district where it is considered by the Provincial Commissioner that a recognizable form of private right-holding exists, any native who claims to be a private right-holder in respect of any portion of the land to which an application to set-apart relates shall be entitled to apply to the District Commissioner for compensation.

(2) Where after consultation with the Local Board, the Provincial Commissioner is satisfied as to the claim of any native so applying, compensation, in addition to the compensation awarded under the last preceding section shall be paid in a lump sum to such native, subject to the provisions of section 39 of this Ordinance, such compensation being calculated on the basis of the full agricultural value of the land plus fifteen per centum thereon.

(3) The amount of compensation to be awarded to any native under sub-section (2) of this section shall be assessed by the Provincial Commissioner after consultation with—

- (a) the natives concerned; and
- (b) the Local Board concerned.

If the Provincial Commissioner and the Local Board are unable to agree upon the sum which should be so awarded as compensation, or if any person desires to appeal against a sum so awarded or against any decision of the Provincial Commissioner as to the existence or non-existence of any system of private right-holding or as to such native's claim to be a private right-holder, the matter shall be referred to the Governor, whose decision shall be final. Any such appeal shall be made in writing through the Provincial Commissioner within twenty-one days of the date of such award or decision.

(4) The amount finally awarded as compensation shall be deposited by the applicant for setting-apart with the District Commissioner who shall be responsible for notifying any person concerned as to the amount so awarded.

35. (1) Where any dispute arises as to the person or persons entitled to receive any sum of money which has been duly assessed under the provisions of this Ordinance such sum shall be deposited by the applicant for setting-apart pending the final award. **Deposit of money until dispute settled.**

(2) Where money has been deposited in the office of the District Commissioner of the district under the provisions of sub-section (1) of this section the District Commissioner after taking the advice of the Local Board having jurisdiction over such area and, after hearing all interested parties, and their witnesses, shall make his award.

(3) Any person aggrieved by the award of the District Commissioner under this section may, within twenty-one days of the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for making any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been heard and determined, the District Commissioner shall, from the sum so deposited, pay the various sums awarded by him or by the Provincial Commissioner to the persons entitled thereto.

36. The Governor, or any other officer authorized by him in that behalf, may grant mining leases in accordance with the provisions of the Mining Ordinance, 1933, in respect of any area of land set-apart from a Native Reserve under this Ordinance. **Governor may grant mining leases. No. 61 of 1933.**

37. (1) Except in respect of cases of private right-holding where compensation has been paid as provided for by section 34 of this Ordinance and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum by way of commuted rent shall be payable by a mining lessee for all land set-apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to Government for such mining lease. **Rent for land to be additional to mining lease rent. No. 61 of 1933.**

(2) The commuted rent payable for the land so set-apart shall be paid to the District Commissioner on behalf of the Local Board concerned, and shall be such an amount as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent

over the term of years for which the mining lease was granted, the calculation of the amount of such annual rent being based on the annual rent payable for the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days of the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as chairman of the Local Board, shall be responsible for making payments in proper cases out of the sums so paid to them by way of commuted rent, to such natives as may be proved to their satisfaction to have been prejudicially affected by the setting-apart of land under the provisions of this Ordinance.

(5) The District Commissioner, as chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in their hands from sums so paid by way of commuted rent.

Term for
which land set
apart to be
concurrent
with term of
mining lease.
No. 61 of 1933.

38. (1) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is set-apart under this Ordinance shall be deemed to run concurrently with the term of the mining lease granted in respect of such land and, save where the mining lease shall have been renewed in accordance with the provisions of the said Mining Ordinance, 1933, the setting-apart of the land shall be deemed to have expired automatically upon the expiry of the mining lease.

No. 61 of 1933.

Where a mining lease is so renewed, the setting-apart of the land shall be deemed also to have been renewed for a like term as the renewal of the mining lease.

No. 61 of 1933.

(2) Upon every such renewal of a mining lease and notwithstanding anything contained in the said Mining Ordinance, 1933, and in addition to any fees and rent payable thereunder, there shall be paid for the renewal of the setting-apart of the land the lump sum of commuted rent provided for in section 37 of this Ordinance and upon the first renewal only there shall be payable as an addition to such commuted rent a sum equal to twenty per centum of the amount of such commuted rent.

(3) Upon the payment of the sums provided in the last sub-section the Provincial Commissioner shall publish in the Gazette a notice of the renewal of the setting-apart

of the land and such renewal shall take effect from the date of such publication save where some other date is expressly mentioned in the notice.

39. Whenever under the provisions of section 34 of this Ordinance a lump sum of money is deposited with a District Commisisoner for the purpose of paying the same to any native, such officer shall have an absolute discretion as to whether he makes such payment by a lump sum or by instalments over a period of time. **Method of making payments.**

40. Should any of the provisions of this Part conflict or be inconsistent with any of the provisions in Part I of this Ordinance, the provisions of this Part shall prevail. **Provisions of Part II to prevail.**

ORDINANCE No. XXXVII of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent. [27TH AUGUST, 1934.]

An Ordinance to Amend the Electric Power Ordinance.

Date of commencement *27th August, 1934*

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

Short title. **1.** This Ordinance may be cited as the Electric Power (Amendment) Ordinance, 1934, and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Cap. 165.

Amendment of section 18 of the Principal Ordinance. **2.** Section 18 of the Principal Ordinance is hereby amended by the addition thereto of the following subsections :—

Renewal of distributing licence.

“(4) Where the duration of a distributing licence is limited the licensee may, within a period of not more than five years (or such greater period as the Governor in Council may in any particular case permit) and not less than three years from the date fixed for the termination of the licence, make application to the Governor in Council for a renewal of such distributing licence. Such application shall be made after public advertisement in manner prescribed by section 125 of this Ordinance.

Procedure on consideration of application for renewal of distributing licence.

(5) Within six months after the receipt of such application and after such inquiry as he may deem necessary, the Governor in Council may grant the application on such terms and conditions and for such period as he may deem fit, or he may refuse the application.

Procedure when distributing licence is to be terminated.

(6) Where no such application for renewal of the licence has been made by the licensee or where such application has been refused, subsequent proceedings shall be in accordance with the provisions of sections 119 and 120 of this Ordinance, as the case may be, and as if the licence terminated had been revoked and the date of revocation were the date of expiration of the licence.”

3. (1) Paragraph (a) of section 19 of the Principal Ordinance is, subject to the proviso contained in this sub-section, hereby repealed and the following is substituted therefor:— Amendment of section 19 of the Principal Ordinance.

“(a) Within six months after the expiration of a period of forty-two years from the date of the distributing licence, or such shorter period as is specified in that behalf in the distributing licence, or within six months after the expiration of every subsequent period of seven years, or such other period as is specified in that behalf in the distributing licence, such local authority shall make an application to the Governor in Council for the revocation of the existing distributing licence as to the whole or part of the area of supply, and for the issue to them of a distributing licence for such area or part thereof. In addition to any notices required to be given by this Ordinance, the applicant shall serve copies of such applications upon the authorized distributor, together with such further particulars as the Governor in Council may direct:”

Provided that the provisions of this sub-section shall not apply to any distributing licence granted before the commencement of this Ordinance but the provisions of paragraph (a) of section 19 of the Principal Ordinance, as the same appeared in that Ordinance before the coming into operation of this Ordinance, shall continue to apply to any such distributing licence.

(2) Paragraph (i) of section 19 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor:—

“(i) Where the application by a local authority for a distributing licence is granted by the Governor in Council under the provisions of this section, such local authority shall by notice in writing require the authorized distributor to sell to them the works suitable for, and used by such authorized distributor under his distributing licence for, the distribution of electrical energy within the area defined in the distributing licence granted to such local authority. Such notice aforesaid shall specify the date on or before

which the sale of such works shall be completed, and the authorized distributor on whom such notice is served shall comply with the provisions of such notice: Provided that the date on or before which such sale shall be completed shall not be later than the date from which the revocation under section 119 (a) of the authorized distributor's licence is to take effect."

Amendment of section 27 (2) of the Principal Ordinance.

4. Paragraph (b) of sub-section (2) of section 27 of the Principal Ordinance is hereby amended—

- (a) by the deletion of the full-stop which occurs at the end thereof; and
- (b) by the addition immediately thereafter of the following words:—

“ and in respect of the supply of electrical energy by the authorized distributor.”

Amendment of section 33 of the Principal Ordinance.

5. Section 33 of the Principal Ordinance is hereby amended by the insertion of the figure “(1)” at the commencement thereof and by the addition of the following sub-sections:

Renewal of local generating licence.

“(2) Where the duration of a local generating licence is limited, the licensee may, within a period of not more than five years (or such greater period as the Governor in Council may in any particular case permit) and not less than three years from the date named in the licence for its termination, make application to the Governor in Council for a renewal of such local generating licence. Such application shall be made after public advertisement in manner prescribed by section 125 of this Ordinance.

Procedure on consideration of application for renewal of local generating licence.

(3) Within six months after the receipt of such application and after such inquiry as he may deem necessary, the Governor in Council may grant the application on such terms and conditions and for such period as he may deem fit, or he may refuse the application.

Procedure when local generating licence is to be terminated.

(4) Where no such application for renewal of the licence has been made by the licensee or where such application has been refused, subsequent proceedings shall be in

accordance with the provisions of sections 119 and 120 of this Ordinance, as the case may be, and as if the licence terminated had been revoked and the date of revocation were the date of expiration of the licence."

6. Section 90 of the Principal Ordinance is hereby amended—

Amendment of section 90 of the Principal Ordinance.

(a) by the insertion of the words "or any check meter", after the word "supply" which occurs in the fifth line thereof; and

(b) by the deletion of the word "is" which occurs in the sixth line thereof and the substitution therefor of the word "it".

7. Section 91 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 91 of the Principal Ordinance.

" 91. Where the value of the supply is under this Ordinance required to be ascertained by means of an appropriate meter or meters, such meter or meters shall be supplied on hire by the licensee who shall fix it or them upon the premises of the consumer and connect the supply system therewith, and if so required, cause the meter or meters to be duly certified under the provisions of this Ordinance and for those purposes he may authorize and empower any officer or person to enter upon the premises (if not in his sole occupation) at all reasonable times and execute all necessary work and do all necessary acts; and the consumer shall pay to the licensee for the hire of any such meter or meters such remuneration in money as may be approved by the Governor in Council and such remuneration shall be summarily recoverable by the licensee as a civil debt:

Licensee to supply meters.

Provided that a consumer shall be entitled to instal in his premises a check meter or meters, which may be his own property, for the purpose of checking the value of electricity supplied to him. The registrations of any such check meter shall not be taken into account in determining the value of the supply, and no such check meter shall be fixed and connected with the supply system except in such manner and subject to such conditions as the Governor may approve:

Provided further that the licensee may, at his sole discretion, agree to the value of the supply to any consumer being ascertained by a private meter belonging to the consumer."

Amendment of section 92 of the Principal Ordinance.

Provision re use of two or three meters.

8. Section 92 of the Principal Ordinance is hereby amended as follows:—

(a) by the deletion of sub-section (1) thereof and the substitution therefor of the following:—

"(1) In any case where the maximum demand of any consumer equals or exceeds two hundred kilo-volt-amperes, if it is so desired by the consumer, two or three appropriate meters shall be employed or used for ascertaining the value of the supply, which shall be the number of units represented by the mean of the readings of such meters; provided that where the last described method of measurement of the value of the supply is desired as aforesaid, the consumer shall only be liable to pay the licensee for the hire of each of such two or three meters one half of the amount which the licensee would have been entitled to charge had only one meter been employed."

(b) by the deletion of the words "the three meters" wherever those words occur in sub-section (2) thereof and the substitution therefor of the words "the two or three meters";

(c) by the deletion of the word "If" which occurs in line 12 of sub-section (2) thereof and the substitution therefor of the following words:—

"In any case where three meters are used for ascertaining the value of the supply in accordance with the provisions of this section, if".

Repeal and replacement of section 93 of the Principal Ordinance.

Meters not to be connected or disconnected without consent or notice.

9. Section 93 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

"93. The licensee shall not connect or disconnect any meter to be used, or used for ascertaining the value of the supply, or any consumer's check meter, with or from any electric supply line through which electrical energy is supplied by the licensee, unless he has obtained

the written consent of the consumer, or alternatively unless he has given to the consumer not less than forty-eight hours' notice in writing of his intention to do so, and if the licensee shall act in contravention of this section he shall be liable for each offence to a penalty not exceeding three pounds."

10. Section 94 of the Principal Ordinance is hereby amended— Amendment of section 94 of the Principal Ordinance.

(a) by the insertion of the words "or unless otherwise mutually arranged," after the word "so" which occurs in the seventh line thereof; and

(b) by the substitution of the word "for" for the word "to" which occurs in the eighth line thereof.

11. Section 96 of the Principal Ordinance is hereby repealed. Repeal of section 96 of the Principal Ordinance.

12. Section 97 of the Principal Ordinance is hereby amended by the deletion from the first and second lines thereof of the following words:— Amendment of section 97 of the Principal Ordinance.

"unless the agreement for hire otherwise provides,".

13. Section 98 of the Principal Ordinance is hereby amended by the insertion after the word "parties" which occurs in the eleventh line thereof of the following:— Amendment of section 98 of the Principal Ordinance.

"In determining the said costs the electrical inspector may take into account any fee paid under section 90 of this Ordinance."

14. Section 99 of the Principal Ordinance is hereby amended by the deletion of the words "is provided with a meter" which occur in the second and third lines thereof and the substitution therefor of the following words:— Amendment of section 99 of the Principal Ordinance.

"has provided, under the provisions of section 91 of this Ordinance, his own private meter".

15. Section 105 of the Principal Ordinance is hereby repealed and the following section substituted therefor:— Repeal and replacement of section 105 of the Principal Ordinance.

" 105. (1) Whoever—

(a) connects, or permits to be connected, any meter referred to in section 88 of this Ordinance, or any meter, indicator or apparatus referred to in Unauthorized connection or disconnection and fraudulent or improper use of electrical energy.

section 100 of this Ordinance, with any electrical supply line through which electrical energy is supplied by a licensee, or disconnects, or permits to be disconnected, any such meter, indicator or apparatus from any such electric supply line, without the consent of the licensee; or

- (b) lays, erects or installs, or permits to be laid, erected or installed, any conductor or apparatus and connects it, or permits it to be connected, with any electric supply line through which electrical energy is supplied by a licensee, without the consent of the licensee; or
- (c) disconnects, or permits to be disconnected, any conductor or apparatus from any electric supply line through which electrical energy is supplied by a licensee, without the consent of the licensee; or
- (d) makes or permits to be made any alteration in his installation without the previous approval of the licensee; or
- (e) in any case where the value of the supply of electrical energy by the licensee is not ascertained by meter, uses any apparatus or lamp other than he has contracted to pay for or uses such apparatus or lamp at any other time than the time specified and for which he has contracted to pay; or
- (f) uses the electrical energy supplied to him for purposes other than that for which it is supplied; or
- (g) supplies any other person with any part of the electrical energy supplied to him by the licensee, without the consent of the licensee,

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty-five pounds and in the case of a continuing offence to a daily penalty not exceeding two pounds, and the licensee may also, until the matter complained of has been remedied, but no longer, discontinue the supply of electrical energy to the premises of the person so offending, notwithstanding any contract which may have been previously entered into.

(2) The existence of artificial or unlawful means for making such connection or disconnection as is referred to in paragraphs (a), (b) and (c) of sub-section (1) of this section, or making such alteration as is referred to in paragraph (d) of sub-section (1) of this section, or facilitating such use or supply as is referred to in paragraphs (e), (f) and (g) of sub-section (1) of this section, shall, where the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, be prima facie evidence that such connection, disconnection, alteration, improper use or supply, as the case may be, has been fraudulently, knowingly and wilfully caused or permitted by the consumer."

16. (1) Sub-section (1) of section 107 of the Principal Ordinance, as replaced by section 6 of the Electric Power (Amendment) Ordinance, 1932, is hereby amended—

Amendment of section 107 of the Principal Ordinance.
No. 23 of 1932.

- (a) by the deletion of the comma after the word "wilfully" which occurs in the first line thereof, and the substitution therefor of the word "or";
- (b) by the deletion of the words "or by culpable negligence", which occur in the first and second lines thereof; and
- (c) by the deletion of the words "or the punishment of the offender" which occur in the ninth and tenth lines thereof.

(2) Sub-section (2) of section 107 of the Principal Ordinance, as replaced by section 6 of the Electric Power (Amendment) Ordinance, 1932, is hereby amended—

No. 23 of 1932.

- (a) by the deletion of the full stop which occurs at the end thereof, and
- (b) by the addition immediately thereafter of the words "by the consumer."

17. Section 125 of the Principal Ordinance is hereby amended as follows:—

Amendment of section 125 of the Principal Ordinance.

- (a) By the deletion of the word "or" which occurs at the end of paragraph (d) of sub-section (1) of the section;
- (b) By the addition of the word "or" at the end of paragraph (e) of sub-section (1) of the section;
- (c) By the addition of the following paragraph to sub-section (1) of the section, immediately after paragraph (e):—
 - "(f) For the renewal of any licence granted under this Ordinance;"

- (d) By the insertion after the words "thirty days" which occur in the sixth line of sub-section (4) of the section of the words "or, in the case of an application for the renewal of any licence, sixty days";
- (e) By the addition of the following proviso to sub-section (6) of the section :—

" Provided that the provisions of section 19 of this Ordinance shall be deemed to continue to apply to any licence so renewed or extended under this section unless the Governor in Council shall otherwise direct."

ORDINANCE No. XXXVIII of 1934

Assented to in His Majesty's name this twenty-second day of August, 1934.

J. BYRNE,
Governor.

[22ND AUGUST, 1934.] Date of assent.

An Ordinance to Make Provision for the Establishment of District Education Boards in the Colony.

22nd August, 1934

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 Ordinance, 1934. Short title.

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

“elementary school” means a school in which provision is made for instruction in accordance with a syllabus approved by the Director for elementary schools;

“sub-elementary school” means a school in which provision is made for instruction in accordance with a syllabus approved by the Director for sub-elementary schools.

(2) Any term defined in the Education Ordinance, 1931, No. 2 of 1931, for the purposes of that Ordinance shall, when used in this Ordinance, bear the same meaning as is assigned to it in the Education Ordinance, 1931, unless such meaning is inconsistent with the context. No. 2 of 1931.

3. The Director may, after consultation with the Provincial Commissioner, establish a District Education Board (hereinafter referred to as “the Board”) in any district in which in the opinion of the Director the establishment of such a Board is likely to assist the development of African education. Establishment of District Education Boards.

Constitution
of the Board.

4. (1) The Board shall consist of the following members :—

- (a) the District Commissioner of the district, or a deputy nominated by him. The District Commissioner or his deputy shall be the chairman of the Board ;
- (b) an education officer appointed by the Director ;
- (c) such persons, not exceeding four in number, as may be nominated by the managers of schools in the district if the Provincial Commissioner approves of such nomination ;
- (d) such African members, not exceeding six in number, as may be nominated by the Local Native Council or Local Native Councils having jurisdiction in the district, if the Provincial Commissioner approves of such nomination ;
- (e) two persons to be nominated by the Provincial Commissioner of whom one shall be a member of the Medical Department and the other a member of the Agricultural Department.

(2) Each member appointed to be a member of the Board under paragraphs (c), (d) and (e) of sub-section (1) of this section shall, subject to the pleasure of the Director, hold office for a period of three years, and any such member shall, upon the expiration of such period, be eligible for re-appointment.

(3) Whenever the Director is satisfied that any member of the Board is incapacitated by illness, absence or other sufficient cause from performing the duties of his office he may appoint some fit person to be a deputy to act for such member during the period of such incapacity ; any deputy so appointed shall have all the powers of the member for whom he is so acting during the period of such member's incapacity.

Meetings and
procedure.

5. (1) Questions before the Board shall be decided by a majority of the votes of those present and voting, and in the case of an equality of votes, the chairman shall have a second or casting vote.

(2) The Board shall at its first meeting decide the number of members which shall constitute a quorum at meetings of the Board, such number not to be less than one-third of the members of the Board.

(3) The Director and the Provincial Commissioner may be present at any meeting of the Board and may take part

in the proceedings at any meeting but they shall not be entitled to vote.

6. (1) The Board may appoint a fit and proper person, who may be a member of the Board, to act as secretary to the Board. Secretary to the Board.

(2) The secretary of the Board shall exercise such powers and perform such duties as may be assigned to him by the Board.

7. The Board shall be responsible, in its district, for each and all of the following matters :— Responsibilities of the Board.

- (a) making recommendations for the establishment of elementary and sub-elementary schools and for the necessary financial provision for such schools;
- (b) the supervision of the working and management of elementary and sub-elementary schools in accordance with such regulations as from time to time may be made by the Director;
- (c) the allocation, subject to the approval of the Director, of grants in aid of elementary and sub-elementary schools in accordance with any rules made under section 45 of the Education Ordinance, 1931, such allocations being made from the funds placed at the disposal of the Board by the Director or the Local Native Council or Local Native Councils; No. 2 of 1931.
- (d) the general promotion and improvement of the education and development of the African in accordance with any directions which the Director may issue from time to time with the concurrence of the Advisory Council on African Education.

8. The Director may make regulations for all or any of the following purposes with regard to Boards established under this Ordinance :— Power to make regulations.

- (a) for prescribing the powers and duties of the Boards in regard to the supervision and management of elementary and sub-elementary schools;
- (b) for prescribing the manner in which records, statistics and accounts shall be kept by the Boards and the manner in which the Boards shall render returns and make recommendations to the Department; and
- (c) for prescribing, subject to the provisions of section 5 of this Ordinance, the procedure to be followed at meetings of the Boards.

ORDINANCE No. XXXIX of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

Date of assent.

[27TH AUGUST, 1934.]

An Ordinance to Amend the Registration of Designs Ordinance, 1933.

Date of commencement

27th August, 1934

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

Short title.

1. This Ordinance may be cited as the Registration of Designs (Amendment) Ordinance, 1934, and shall be read as one with the Registration of Designs Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

No. 57 of 1933.

Amendment of section 5 of the Principal Ordinance.

2. Section 5 of the Principal Ordinance is hereby amended by the deletion of the word "certified" which occurs in the third line thereof.

Amendment of section 13 of the Principal Ordinance.

3. Section 13 of the Principal Ordinance is hereby amended by the deletion of the word "clerical" which occurs in the first line of paragraph (b) of sub-section (1) thereof.

ORDINANCE No. XL of 1934

Assented to in His Majesty's name this twentieth day of November, 1934.

J. BYRNE,
Governor.

[20TH NOVEMBER, 1934.] Date of assent.

An Ordinance to Provide for the Levy of a Native Hut and Poll Tax.

By Notice.

Date of commencement

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

1. This Ordinance may be cited as the Native Hut and Poll Tax Ordinance, 1934, and shall come into operation on such date as the Governor may by notice in the Gazette appoint. Short title and commencement

2. In this Ordinance, unless inconsistent with the context— Interpretation.

“adult male native” means a male native of the apparent age of sixteen years or over ;

“collector” means a district officer and any person appointed by a district officer to assist in the collection of taxes leviable under this Ordinance ;

“headman” includes a sub-headman, and a head of a section, clan, village or manyatta ;

“hut” means a hut constructed according to native custom or any building used by a native as a dwelling other than those erected and maintained by his employer ;

“native” means a native of Africa not of European or Asiatic extraction, and includes a Swahili ;

“poll tax” means a payment equivalent to the tax by this Ordinance leviable on huts to be made in any year by an adult male native who has not in respect of such year been liable to hut tax ;

“wife” means a wife by marriage or by native law and custom and includes a concubine.

Power of
Governor to
prescribe hut
tax and
poll tax.

3. The Governor may by notice in the Gazette prescribe the amount of hut tax and poll tax which shall be payable for any year, and may in such notice prescribe different amounts for different districts, areas, places or tribes :

Provided that no tax may be prescribed under this section at a higher rate than twenty shillings per annum.

Hut tax.

4. (1) Every native being the owner or occupier of a hut in any district in the Colony shall pay a tax (hereinafter referred to as "the hut tax") for each year at the rate prescribed under section 3 of this Ordinance in respect of each hut owned or occupied by him or her in such district during any portion of that year :

Provided that every male native shall be liable for tax in respect of any hut or huts owned or occupied by his wife or wives.

(2) If a native has one wife he shall pay one tax, if he has more than one wife he shall be deemed to be the owner of a separate hut in respect of each wife.

Poll tax.

5. Every adult male native who shall not be liable to pay the hut tax provided for in section 4 of this Ordinance shall pay in each year a poll tax of such amount as may be prescribed under section 3 of this Ordinance.

Taxes when
payable.

6. (1) The amount due from each native for hut tax or poll tax shall become due and payable on the first day of January in each year, and shall, if not paid on or before the thirty-first day of January in that year on conviction be recoverable by distress at any time after the latter date, and in default of distress the Court may order imprisonment or detention for any period not exceeding three months :

Provided that if on conviction the Court is unable to ascertain the whereabouts of any property of the person so convicted the Court may, if it thinks fit, instead of issuing a warrant of distress, commit such person to prison or to detention in a detention camp for any period not exceeding three months unless the hut or poll tax, as the case may be, is paid immediately or within such period as the Court may order :

And provided further that any hut or huts in respect of which the tax has not been paid or recovered by distress on or before the thirtieth day of September in the year next following that in which the tax became due shall be liable to be forfeited to the Government of the Colony.

(2) Whenever proceedings are taken for the recovery of any tax under this Ordinance, it shall be lawful for the court to order the person in default to pay such sum in respect of court costs, not exceeding in any case six shillings, as the court in its discretion may determine.

7. A receipt for the amount of tax paid by each native, shall be issued by a collector and delivered to the person paying the tax and such receipt shall be evidence of the payment of the tax : Receipt for the tax paid.

Provided always that if the receipt cannot be produced the court may in its discretion admit other evidence in proof of payment.

8. Whenever it shall be proved to the satisfaction of a district officer that any person liable to pay any tax under this Ordinance is without sufficient means to pay the whole amount of such tax, such district officer may, subject as hereinafter provided, allow the remission of the whole or a portion of such tax, as the case may require : Provided that in such case the district officer shall give to such person a certificate in such form as may be prescribed, and such certificate shall relieve the person in respect of whom the same shall have been given from liability to pay such portion of the tax and for such period as may be specified in such certificate, unless and until the same shall be cancelled by a district officer. Power to remit tax in certain cases.

9. The Governor may by proclamation exempt any person or class of persons or the members of any tribe or the inhabitants of any district, area or place from payment of the whole or any portion of any tax leviable under this Ordinance, and may in like manner rescind or alter any such exemption : Exemptions; powers of Governor.

Provided that nothing in this section contained shall affect the exemption by any other Ordinance provided for.

10. In the event of any person within the description of any of the classes of persons set out in the Schedule hereto, owing to injuries received whether prior or subsequent to the date of this Ordinance on active service against an enemy or otherwise on active service or owing to a disease contracted on such active service or as a result thereof, becoming totally or partially disabled to such an extent as materially to affect his wage-earning capacity, the commanding officer of such person at the time of such injuries or disease being received, contracted or resulting as aforesaid, or such officer as the Provision for the remission of hut and poll tax in certain events.

Governor may appoint in that behalf may recommend and the Governor may sanction the exemption of such person from the payment of hut tax on one hut for life or from the payment of poll tax in respect of himself for life as the case may be.

Collector may enter land and buildings in execution of duty.

Tax roll.

11. A collector may enter upon any land or into any building in the execution of his duties under this Ordinance.

12. (1) A district commissioner shall maintain a complete roll of taxpayers in his respective district.

(2) Every tax roll shall contain—

(a) the name of every owner of a hut, the number of huts owned by each hut-owner, and the number of wives of each hut-owner; and

(b) in the case of a native who is not liable for hut tax the name and father's name of such native.

Hut counters.

13. For the purpose of the preparation of the tax roll a district officer may employ persons (hereinafter referred to as "hut-counters") whose duty it shall be to prepare, under the direction of the district officer, the roll of taxpayers in the area to which they may be respectively appointed.

Headman to supply information to hut counters.

14. (1) The district officer shall notify each headman of the date on which the hut-counter will commence to prepare the tax roll in the area to which such headman has been appointed, and it shall be the duty of each headman to furnish the hut-counter with any information, which he may require in order to compile a complete tax roll for the area to which such headman is appointed, and, unless excused by the district officer, to accompany the hut-counter whilst engaged in preparing such tax roll.

(2) A headman may, in lieu of accompanying the hut-counter, order any headman subordinate to him to accompany the hut-counter and to furnish the information aforesaid, and it shall be the duty of such subordinate headman to obey such order :

Provided that nothing hereinbefore contained shall be deemed to relieve a headman of the duty to furnish a hut-counter with any information which he may require for the purposes aforesaid. It shall further be the duty of such headman, upon receiving the said notification from the district

officer, to order every adult male native subject to his jurisdiction to appear before the hut-counter and give him such information as he may require for the preparation of the tax roll, and any native failing to obey such order shall be liable on conviction to a fine not exceeding three pounds or to imprisonment for a period not exceeding one month.

15. A headman shall order any native subject to his jurisdiction who shall not have paid the tax payable by him at the time and place appointed by the collector either to attend before the collector or to send the amount of the tax payable by him to such collector. Any native who fails without lawful excuse to obey the orders of a headman given under this section shall be liable to the penalties provided in the last preceding section.

Power to headman to order natives to appear before collectors.

16. Any hut-counter who shall intentionally omit from the tax roll the name of any person whose name should be included in such roll, or who shall intentionally misstate the number of huts owned by any person or the number of the wives of any hut-owner, shall be liable on conviction to a fine not exceeding thirty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Penalty for offences by hut-counter.

17. Any headman who intentionally gives false information to a hut-counter under section 14 of this Ordinance or who, without lawful excuse, refuses or neglects to perform any duty imposed upon him by this Ordinance, or to issue any order which he is required to issue by this Ordinance, shall be liable to the penalties provided in the last preceding section.

Penalty for offences by headman.

18. Every person paying the tax shall furnish the collector to whom payment is made with such information as may be required by him in preparing a receipt in the prescribed form, and shall, if so required by such collector, attend personally before him for such purpose.

Information for the preparation of a receipt.

19. Any person who wilfully furnishes a collector with false particulars in regard to any information required by such collector in preparing a receipt, or who, on being required to attend before a collector, neglects or refuses to attend, or, when attending neglects or refuses to furnish any information required as aforesaid, shall on conviction be liable to a fine not exceeding three pounds or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

Penalty for giving false particulars.

Production
of receipt
to collector.

20. (1) A collector may, at any time, require any native to produce the receipt granted to such native for the payment of the tax last payable, and may retain any such receipt produced for such time as he may consider necessary for the purpose of identifying the person named in such receipt with the person producing the same.

(2) A collector may require any native who refuses or neglects to produce his receipt when so required, to furnish him with information as to the office at which or the person to whom he has paid his tax last payable, and with such further information as the collector may require for the purpose of ascertaining whether such native has paid such tax.

(3) Any native who, without lawful excuse, neglects or refuses to produce his receipt when required as aforesaid, or who, having failed or refused to produce his receipt, fails to furnish the information which may be required of him under the last preceding sub-section shall, on conviction, be liable to a fine not exceeding three pounds or to imprisonment for a period not exceeding two months.

(4) Evidence of the non-production of a receipt for the payment of a tax upon requisition being made as aforesaid shall, in and for the purposes of any proceedings for the recovery of such tax, be prima facie evidence that the tax has not been paid.

(5) Any native who, on being required by a collector to produce his receipt, produces a receipt granted to some other person, or who, having failed or refused to produce his receipt, furnishes a collector with any false particulars in regard to any information which may be required of him under sub-section (2) of this section shall, on conviction, be liable to a fine not exceeding seven pounds ten shillings or to imprisonment for a period not exceeding three months.

(6) Any native who transfers to any other native any receipt granted to him with the intention or with the knowledge that it is likely that such other native will falsely produce such receipt as a receipt granted to him, shall be guilty of an offence and on conviction shall be liable to the penalties provided in the last preceding sub-section.

Power to
make Rules.

21. The Governor may make Rules—

(a) prescribing the duties of all persons engaged or employed in the administration of this Ordinance;

1934

Native Hut and Poll Tax

No. XL

- (b) prescribing the forms of tax rolls and receipts;
- (c) for the collection of hut or poll tax in any place which under any law in force in the Colony is declared to be a municipality or a township; and
- (d) generally for carrying out the provisions of this Ordinance.

22. The Native Hut and Poll Tax Ordinance (Chapter Repeal 51 of the Revised Edition) is hereby repealed, but such repeal shall be without prejudice to the collection of any arrears of tax due and payable under that Ordinance.

SCHEDULE.

Any native officer, non-commissioned officer or private of the King's African Rifles, or any native carrier, or any combatant or non-combatant native, recruited or selected under any Ordinance for the time being in force or otherwise for any form of military service.

ORDINANCE No. XLI of 1934

Assented to in His Majesty's name this twenty-seventh day of August, 1934.

J. BYRNE,
Governor.

[27TH AUGUST, 1934.] Date of assent.

**An Ordinance to Amend the Traffic Ordinance,
1928.**

27th August, 1934

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, 1934, and shall be read as one with the Traffic Ordinance, 1928, hereinafter referred to as the Principal Ordinance. Short title. No. 26 of 1928.

2. (1) It shall not be lawful for more than one person in addition to the driver to be carried on a two-wheeled motor-cycle, nor shall it be lawful for any such person to be so carried otherwise than on a proper seat securely fixed to the cycle behind the driver's seat. Restriction on pillion riding.

(2) If any person is carried on any such cycle in contravention of the provisions of this section, the driver of the cycle shall be liable in the case of the first conviction to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding ten pounds.

3. No person shall travel, or be permitted by the owner or driver to travel upon a motor vehicle when such vehicle is loaded to such an extent that the space available for such person to sit in or stand or sit upon is insufficient to enable him to travel upon such vehicle in safety, and in no case shall any person travel or be permitted by the owner or driver to travel on the footboard or mudguard or elsewhere on the outside of any motor vehicle. Restriction on travelling on loaded motor vehicles.

4. Sub-section (4) of section 12A of the Principal Ordinance is hereby deleted and the following substituted therefor :— Amendment of section 12A of the Principal Ordinance.

(4) Any person driving a motor vehicle on a road shall, on being so required by a police officer, produce his driving licence for examination, so as to enable the police officer to ascertain the name and address of the holder of the licence and the date of the issue, and if he fails so to do, he shall be liable to a fine not exceeding five pounds :

Provided that, if within five days after the production of his licence was required the licensee produces the licence in person at such police station as may be specified by him at the time its production was required, he shall not be convicted of an offence under this subsection.

Amendment of section 31 of the Principal Ordinance.

5. Section 31 of the Principal Ordinance is hereby amended by the substitution of the figures and words "6.15 p.m. and 5.45 a.m." for the figures and words "6.45 p.m. and 6.15 a.m." which occur in the second and third lines thereof.

Amendment of section 28B of the Principal Ordinance.

6. Section 28B of the Principal Ordinance is hereby amended by the addition at the end thereof of the following proviso :—

"Provided that the provisions of this section shall not apply to any person who hires a public service vehicle for the purpose of driving such vehicle himself and whose passengers, if any, are not carried for hire or reward."

Amendment of section 29 of the Principal Ordinance.

7. Section 29 of the Principal Ordinance is hereby amended by the addition at the end thereof of the following proviso :—

"Provided that the provisions of paragraphs (d) and (e) of this section shall not apply to any person who hires a motor vehicle for the purpose of driving such vehicle himself and whose passengers, if any, are not carried for hire or reward."

Amendment to Schedule to the Principal Ordinance.

8. (1) Part I of the Schedule to the Principal Ordinance is hereby amended—

(a) by the deletion of sub-paragraphs (c) and (d) of paragraph (1) thereof and the substitution therefor of the following—

“(c) for a motor vehicle with pneumatic tyres—

(i) not exceeding 1,500 lb. in tare
weight £4 0 00

(ii) for every additional 250 lb. or
part thereof up to 10,800 lb.... 10 00 ”

and

(b) by the deletion of sub-paragraphs (c) and (f) of paragraph (2) thereof.

(2) Part II of the Schedule to the Principal Ordinance is hereby amended by the deletion of the following—

“(c) If the tyres are of metal and under four
inches in width 1 50
Increasing by Cents 50 annually
after the fourth year ”,

and the substitution therefor of the following—

“(c) If the tyres are of metal and under four
inches in width 2 00.”

The provisions of paragraph (c) shall come into force on the first day of January, 1935.

The following information is provided for your information. The information is for informational purposes only and does not constitute an offer or a recommendation. The information is subject to change without notice. The information is not intended to be used as a basis for investment decisions. The information is not intended to be used as a basis for investment decisions. The information is not intended to be used as a basis for investment decisions.

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ORDINANCE No. XLII of 1934

Assented to in His Majesty's name this twenty-fourth day of October, 1934.

J. BYRNE,
Governor.

[24TH OCTOBER, 1934.] Date of assent.

An Ordinance to Amend the Customs Tariff Ordinance, 1930.

24th October, 1934.

Date of commencement

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

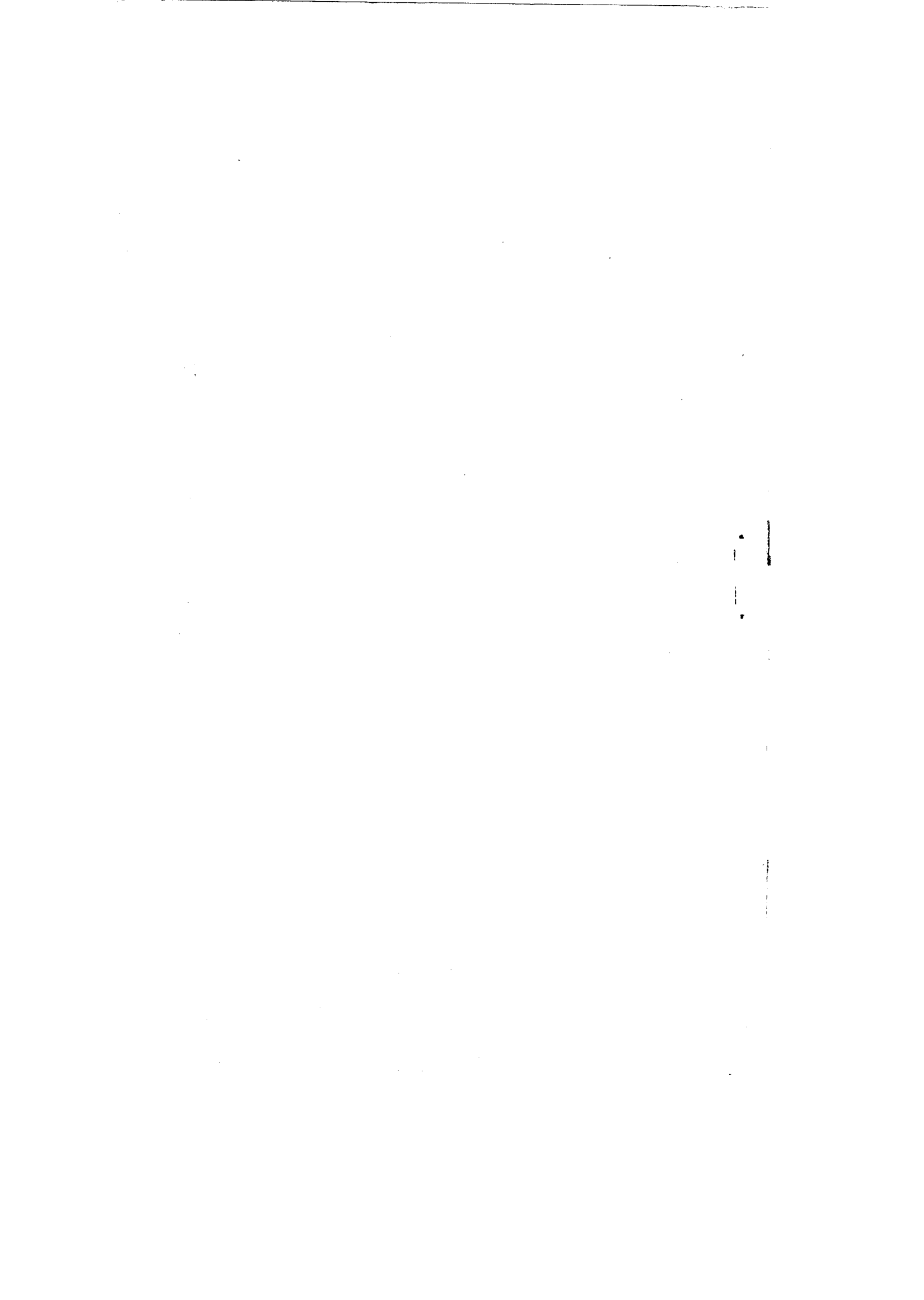
1. This Ordinance may be cited as the Customs Tariff (Amendment) Ordinance, 1934, and shall be read as one with the Customs Tariff Ordinance, 1930 (hereinafter referred to as the Principal Ordinance), and all amendments thereto. Short title. No. 1 of 1930.

2. The Schedule to the Principal Ordinance is hereby amended by the deletion of items 19, 38, 38A (i), (ii), (iii), (iv), 40, 49 (e), 49 (f), 62, 100, 104, 118, and by the addition in their respective numerical positions of the following:—

Item	Article	Duty
19	Poultry grit and spice, bone meal and bone flour, mineral mixtures for stock feeding which contain 70 per cent of one or more of the following ingredients:— Calcium, phosphoric oxide, iron, iodine.. ..	Free.
33	Clothing and apparel, n.e.e., second-hand (reconditioned or otherwise) for sale	<i>Ad valorem</i> 30 per cent.
38A	Apparel and blankets—	
	(i) Blankets	Each, 30 cents or 20 per cent <i>ad valorem</i> , whichever is higher.
	(ii) Boots and shoes of which the soles are made of rubber and the uppers of canvas and/or leather	Per pair, 40 cents or 20 per cent <i>ad valorem</i> , whichever is higher.
	(iii) Cardigans, jerseys and pullovers	Each, 35 cents or 20 per cent <i>ad valorem</i> , whichever is higher.
	(iv) Shirts	Each, 35 cents or 20 per cent <i>ad valorem</i> , whichever is higher.

Item	Article	Duty
40	Piece goods— (a) Cotton, grey and unbleached, not elsewhere specified (b) Other (including scarves, shukas, chadders, khangas, bedspreads and the like) made of cotton or admixtures of cotton with other material not elsewhere specified (c) Made of silk or artificial silk or of materials containing silk or artificial silk	10 cents per square yard or 20 per cent <i>ad valorem</i> , whichever is higher. 12 cents per square yard or 20 per cent <i>ad valorem</i> , whichever is higher. 20 cents per square yard or 20 per cent <i>ad valorem</i> , whichever is higher.
49(c)	Bicycles and tricycles, n.e.c.	Each, Sh. 12 or 20 per cent <i>ad valorem</i> , whichever is higher.
49(f)	Parts and accessories of bicycles and tricycles (not including rubber tyres or tubes when imported separately) viz. :— (i) Frames, including front fork and back stay .. (ii) Frames, excluding front fork and back stay .. (iii) Front forks (iv) Back stays (v) Handle bars (with fittings or otherwise) .. (vi) Saddles (vii) Rims (viii) Chains Other parts	Each, Sh. 6 or 20 per cent <i>ad valorem</i> , whichever is higher. Each, Sh. 4 or 20 per cent <i>ad valorem</i> , whichever is higher. Each, Sh. 1/25 or 20 per cent <i>ad valorem</i> , whichever is higher. Each, 75 cents or 20 per cent <i>ad valorem</i> , whichever is higher. Each, Sh. 1/50 or 20 per cent <i>ad valorem</i> , whichever is higher. Each, Sh. 1 or 20 per cent <i>ad valorem</i> , whichever is higher. Each, 40 cents or 20 per cent <i>ad valorem</i> , whichever is higher. Each, 40 cents or 20 per cent <i>ad valorem</i> , whichever is higher. 20 per cent <i>ad valorem</i> .
62	Motor and steam road and farm tractors and trailers therefor; stone crushers, road rollers, graders, and scarifiers, road sweepers and sprayers and other mechanically propelled engines, machines and vehicles ordinarily employed in the construction and maintenance of roads; motor ambulances; parts and accessories therefor, but not including lamps, bulbs, batteries, magnetos, ignition coils, sparking plugs, and rubber tyres and tubes, when imported separately	Free.

Item	Article	Duty
100	Oil— (a) Transformer (b) Batching, and ingredients thereof on proof to the satisfaction of the Commissioner of Customs that they are imported solely for use in the manufacture of rope, cordage, twine, sacking or similar material	Free. Free.
104	Soap, n.e.c., soap powders and extracts	Sh. 5 per 100 lb. or 20 per cent <i>ad valorem</i> , whichever is greater.
118	Sulphate of copper, arsenate and arsenite of soda, arsenate of lead, cyanogas, naphthalene, animal dips, calcium carbide, whale oil soap and fish oil soap, insect sprays and other substances for the prevention or destruction of pests and for the prevention and cure of diseases in animals, plants and trees	Free.



ORDINANCE No. XLIII of 1934

Assented to in His Majesty's name this thirtieth day of November, 1934.

J. BYRNE,
Governor.

[30TH NOVEMBER, 1934.] Date of assent.

**An Ordinance to Amend the Mining Ordinance,
1933.**

30th November, 1934.

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 (Amendment) Ordinance, 1934, and shall be read as one with the Mining Ordinance, 1933, hereinafter referred to as the Principal Ordinance. Short title.
No. 61 of 1933.

2. Section 2 of the Principal Ordinance is hereby amended by the addition after the definition of "non-precious minerals" of the following definition :— Amendment of section 2 of the Principal Ordinance.

“ ‘officer of the Mines Department’ means an officer appointed under section 9 of this Ordinance;”.

3. Sub-section (1) of section 13 of the Principal Ordinance is hereby amended by the substitution of a semi-colon for the full-stop at the end of paragraph (b) thereof and by the addition thereafter of the following paragraph :— Amendment of section 13 (1) of the Principal Ordinance.

“(c) to any person to whom there has previously been issued either in his own name or as agent for any individual, syndicate, partnership or company a prospecting right which has not been surrendered or cancelled and which is in all other respects still valid.”

4. Paragraph (3) of section 14 of the Principal Ordinance is hereby repealed and the following substituted therefor :— Repeal and replacement of section 14 (3) of the Principal Ordinance.

“(3) make excavations, sink shafts or wells, drive adits or levels or dig trenches,”.

Repeal and replacement of section 19 of the Principal Ordinance.

Rights under an exclusive prospecting licence.

5. Section 19 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

“19. (1) The holder of an exclusive prospecting licence shall, upon the lands within the area of such prospecting licence and during the currency of such licence, have the following rights :—

- (a) the sole right of prospecting ;
- (b) the sole right of alluvial mining if he has obtained the consent thereto of the Commissioner and has 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 ; and
- (c) the sole right of pegging locations.

(2) The holder of an exclusive prospecting licence may for the purposes set out in the last preceding sub-section—

- (a) enter upon the land within such area with his agents and workmen and thereon exercise all or any of the rights conferred upon the holder of a prospecting right ;
- (b) employ in prospecting on such land any number of persons who for the purpose of such prospecting shall not be required to hold prospecting rights ; and
- (c) on and over unoccupied land within the area of his licence erect and maintain such machinery and plant, and construct such ways as may be necessary for or in connection with his prospecting operations.”

Amendment of section 31 of the Principal Ordinance.

6. Section 31 of the Principal Ordinance is hereby amended by the insertion after the word “have” in the first line thereof of the following words :—

“in respect of such location all rights conferred on the holder of a prospecting right and shall have”.

Amendment of section 36 of the Principal Ordinance.

7. Section 36 of the Principal Ordinance is hereby amended by the deletion of the words “or the” which occur between the words “former” and “holder” in the ninth line thereof.

8. Section 45 of the Principal Ordinance is hereby amended by the deletion of the words "at that time be liable to be forfeited" which occur in the third and fourth lines thereof, and the substitution therefor of the words "prior to such expiration have become liable to forfeiture".

Amendment
of section 45
of the
Principal
Ordinance.

9. Section 76 of the Principal Ordinance is hereby amended by the substitution of the figures "23" for the figures "24" which occur in the fourth line thereof.

Amendment
of section 76
of the
Principal
Ordinance.

10. Section 80 of the Principal Ordinance is hereby amended in the following respects :—

Amendment
of section 80
of the
Principal
Ordinance.

(a) by the insertion therein next after paragraph (v) of the following additional paragraph numbered as (vi) :—

"(vi) examine and make inquiry into any accident occurring in respect of any prospecting or mining activity and may lay information before a magistrate and apply for a summons or other legal process against any person in connection therewith." ;

(b) by the renumbering of paragraph (vi) therein as paragraph (vii).

11. Section 84 of the Principal Ordinance is hereby amended and shall be read as if the word "four" which occurs in the third line thereof were deleted and the word "three" substituted therefor ;

Amendment
of section 84
of the
Principal
Ordinance.

12. Section 85 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

Repeal and
replacement of
section 85 of
the Principal
Ordinance.

"85. (1) Every person in charge of mining or prospecting operations shall, as soon as practicable after the occurrence of any accident in connection with mining or prospecting 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 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 inquiry into the cause thereof.

(3) The magistrate holding the inquiry shall, for the purpose of an inquiry under sub-section (2), 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 and neglecting to do so, 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 inquiry 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."

Repeal and replacement of section 86 of the Principal Ordinance. Compensation on death of or injury to employees.

13. Section 86 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

"86. (1) Save as is provided in sub-section (6) of this section, compensation, the amount of which shall be assessed by the magistrate, shall be payable by any lessee, holder of a location, licence or right in respect of any personal injury caused to any person employed by such lessee, holder of a location, licence or right by any accident arising out of and in the course of his employment where by such person has become temporarily or permanently, partially or totally incapacitated, or has met his death :

Provided that no compensation shall be payable under this section in respect of an injury to a person which was due to his own serious and wilful misconduct. For the purposes of this section the expression 'serious and wilful misconduct' shall include 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 or omission which the magistrate, having regard to all the circumstances of an accident causing injury, may declare to be serious and wilful misconduct.

- (2) The amount of compensation so assessed shall not exceed—
- Amount of compensation.
- (a) in the case of death or total or permanent incapacitation a sum of seven hundred and fifty pounds or a sum of money calculated by multiplying by thirty-six the monthly wage or salary of which the person killed or incapacitated was in receipt at the time of the accident, whichever sum is the less;
- (b) in any case other than death or total or permanent incapacitation a sum of three hundred and fifty pounds or a sum of money calculated by multiplying by eighteen the monthly wage or salary of which the person injured was in receipt at the time of the accident, whichever sum is the less.
- (3) Where such compensation is to be paid in respect of an injury it shall be paid to the person injured.
- To whom compensation to be paid.
- (4) Where such compensation is to be paid in respect of death it shall be paid—
- (a) if the deceased was a non-native, to the legal representative of the deceased;
- (b) if the deceased was a native, to the District Commissioner of the district in which the accident occurred, for and on behalf of the dependants of the deceased.
- (5) Any person dissatisfied with any award of the magistrate made under the provisions of this section may, within thirty days of the making of the award and on giving notice to such magistrate, appeal to the Supreme Court.
- Appeals.
- (6) The provisions of this section shall not apply in respect of a personal injury to or the death of a person who at the time of the accident was—
- Persons excluded from compensation.
- (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 overtime."

Repeal and replacement of section 91 of the Principal Ordinance.
Payment of wages.

14. Section 91 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

"91. (1) All wages due to any person employed by the holder of a prospecting right or on any location, lease or exclusive prospecting licence area shall be paid to such person in cash when due and in no case later than seven days thereafter.

(2) No deduction whatsoever shall be made from such wages save only in respect of—

- (a) repayment of cash advances made to the employee by the employer,
- (b) payments for goods ordered by the employee for his personal use and supplied to him by the employer on the location, lease or exclusive prospecting licence area."

ORDINANCE No. XLIV of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

[15TH NOVEMBER, 1934.] Date of assent.

**An Ordinance to Amend the Police Ordinance,
1930.**

15th November, 1934.

Date of
commencement

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

1. This Ordinance may be cited as the Police (Amend-
ment) Ordinance, 1934, and shall be read as one with the
Police Ordinance, 1930, hereinafter referred to as the Principal
Ordinance.

Short title.

No. 64 of 1930.

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

Amendment of
section 2 of
the Principal
Ordinance.

(a) By the substitution of the words " Depot Instructor " for the words " Sergeant Instructor " which occur in the definition of " Inspector " ;

(b) By the deletion of the definitions of " Commissioned Officer," " Non-Commissioned Officer," and " Subordinate Officer," and the insertion of the following definitions :—

" 'Superior Police Officer' means any police officer of or above the rank of Assistant Superintendent ;

'Subordinate Police Officer' means any police officer below the rank of Assistant Superintendent ; .

'Police station' means a post or place appointed by the Commissioner to be a police station, and includes any local area policed from such station."

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

Repeal and
replacement of
section 3 of
the Principal
Ordinance.

Constitution of
Police Force.

“ 3. The Police Force (to be known as ‘ The Kenya Police ’) shall be formally enrolled and shall consist of such number of superior police officers and subordinate police officers as may from time to time be ordered by the Governor.”

Amendment of
section 4 of
the Principal
Ordinance.

4. Section 4 of the Principal Ordinance is hereby amended :—

(a) By the deletion of the headings “ Commissioned Officers ” and “ Non-Commissioned Officers ” and by the substitution therefor of the headings “ Superior Police Officers ” and “ Subordinate Police Officers ” respectively ;

(b) By the deletion of the heading “ Subordinate Officers ” ;

(c) By the deletion of the term “ European Constables ” and the substitution therefor of the term “ Assistant Inspectors, Second Grade ” ;

(d) By the deletion of the term “ Sergeant Instructors ” and the substitution therefor of the term “ Depot Instructors.”

Amendment of
section 7 of
the Principal
Ordinance.

5. Section 7 of the Principal Ordinance is hereby amended by the substitution of the words “ superior or other police officer as may be appointed by the Commissioner ” for the words “ commissioned or non-commissioned officer as may be present ”.

Amendment
section 16 of
the Principal
Ordinance.
Enlistment
of police
officers.

6. Section 16 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

“ 16. (1) Every subordinate police officer of or above the rank of assistant sub-inspector shall be enlisted to serve in the Police Force in accordance with the provisions of this Ordinance and with the regulations in force for the time being in the Colony governing the conditions of service applicable to the office he holds : Provided that in the event of any conflict or inconsistency between the provisions of this Ordinance and the regulations the provisions of this Ordinance shall prevail.

(2) Every subordinate police officer below the rank of assistant sub-inspector shall be enlisted to serve in the Police Force for a period of five years or for such less period as may from time to time be fixed by the Governor, such period to be reckoned from the date on which such subordinate police officer shall have been approved for service and taken on the strength of the force.”

7. Section 19 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

Amendment of section 19 of the Principal Ordinance.

“19. (1) European police officers shall be eligible for leave in accordance with the regulations for the time being in force for European officers in the service of the Colony.

Leave conditions.

(2) Asiatic police officers shall be eligible for leave in accordance with the regulations for the time being in force for the Asiatic permanent staff in the service of the Colony.

(3) African police officers may be granted local leave on full pay not exceeding fourteen days in any one year.

If the exigencies of the service preclude the grant of local leave in any year such leave may accumulate, provided that no leave in excess of six weeks at any time may be granted under this sub-section. Leave granted under this sub-section shall be in addition to any leave granted under sub-section (4) or sub-section (5) of this section.

(4) Any African police officer who, being entitled to his discharge at the end of any period of service, re-engages for further service or who has completed three years of his original term of service on enlistment, may, with the approval of the Commissioner, be granted vacation leave on full pay at the rate of one month for each completed year of service. Leave granted under the provisions of this sub-section shall in no case exceed three months.

(5) African police officers domiciled in Somaliland, Nyasaland, Uganda, Tanganyika, Aden or the Sudan may be granted additional leave on full pay to cover the period necessarily occupied in proceeding to and returning from their place of domicile, in addition to any leave granted in accordance with the provisions of sub-sections (3) or (4) of this section: Provided that, except with the approval of the Governor, such period of additional leave for travelling shall in no case exceed fourteen days.”

Amendment of section 20 of the Principal Ordinance.

8. Section 20 of the Principal Ordinance is hereby amended as follows:—

(a) by the substitution of the words "Any subordinate police officer below the rank of assistant sub-inspector" for the words "Any Asiatic non-commissioned officer or any subordinate officer" which occur in the first and second lines of sub-section (1) thereof;

(b) by the deletion of the words "and of the Governor" which occur in the third line of sub-section (3) thereof;

(c) by the deletion of the words "pension or" which occur in the seventh and thirteenth lines of sub-section (4) thereof;

(d) by the substitution of the words "If any subordinate police officer below the rank of assistant sub-inspector" for the words "If any Asiatic non-commissioned officer or any subordinate officer" which occur in the first and second lines of sub-section (5) thereof, and by the deletion of the words "but not of pension" which occur in the eighth line thereof.

Repeal and replacement of section 21 of the Principal Ordinance.

9. Section 21 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Exemption from hut or poll tax or gratuities in lieu thereof.

" 21. (1) Subject to the approval of the Treasurer on the recommendation of the Commissioner every African subordinate police officer who has been enlisted on or before the thirty-first day of December, 1932, shall, after nine years' continuous good service, be exempt from payment of poll tax in respect of himself for his life, or alternatively, he shall be exempt from the payment of hut tax in respect of one hut for his life :

Provided that any such African subordinate police officer to whom exemption from paying poll tax or hut tax has been granted under this sub-section may, at his option exerciseable at the time of discharge, be paid in lieu of such exemption, a gratuity, viz :—

	£	s.
(a) In the case of such African subordinate police officer on discharge after continuous good service extending to a period of nine years	7	10
(b) In the case of such African subordinate police officer on discharge after continuous good service extending to a period of twelve years	10	00

(2) Subject to the approval of the Treasurer on the recommendation of the Commissioner every African subordinate police officer who has been enlisted on or after the first day of January, 1933, shall be granted, in addition to any other gratuity payable on discharge under the provisions of this Ordinance or any regulation thereunder, gratuities, viz :—

	£	s.
(a) In the case of such African subordinate police officer on discharge after continuous good service extending to a period of nine years	7	10
(b) In the case of such African subordinate police officer on discharge after continuous good service extending to a period of twelve years	10	00'

10. Section 24 of the Principal Ordinance is hereby amended as follows :—

Amendment
section 24 of
the Principal
Ordinance.

(a) By the deletion of the term "European Constable" wherever that term occurs therein and the substitution therefor of the term "assistant inspector, second grade";

(b) By the deletion of the word "constable" wherever that word occurs therein and the substitution of the words "police officer";

(c) By the repeal of paragraph (a) (ii) of sub-section (1) thereof and the substitution therefor of the following paragraph :—

“(ii) If he has not been confirmed in his appointment and is pronounced by a Government medical officer to be mentally or physically unfit for further service”;

(d) By the deletion of paragraph (a) (iii) of sub-section (1) thereof;

(e) By renumbering paragraph (a) (iv) of sub-section (1) thereof as (a) (iii);

(f) By the deletion of the words "provisions of the European Officers' Pensions Ordinance, 1927," which occur in the second and third lines of paragraph (b) of sub-section (1) thereof and the substitution therefor of the words "regulations for the time being in force for other European officers";

(g) By the repeal of paragraph (b) (ii) of sub-section (1) thereof and the substitution therefor of the following paragraph :—

“(ii) If he has been confirmed in his appointment and is pronounced by a Government medical officer to be mentally or physically unfit, not through his own misconduct, for further service”;

(h) By the insertion of the words “or African” after the word “Asiatic” where such word occurs in the first line of sub-section (2) thereof;

(i) By the repeal of paragraph (iii) of sub-section (2) thereof;

(j) By the re-numbering of paragraphs (iv) and (v) of sub-section (2) thereof as (iii) and (iv) respectively.

Amendment of section 25 of the Principal Ordinance.

11. Section 25 of the Principal Ordinance is hereby amended by the substitution of the words “Assistant inspector, second grade, Asiatic or African subordinate police officer” for the words “European constable or Asiatic non-commissioned officer or any subordinate officer” which occur in the first and the second lines thereof; and by the deletion of the words “constable or ” which occur in the fourth line thereof.

Amendment of section 26 of the Principal Ordinance.

12. Section 26 of the Principal Ordinance is hereby amended by the deletion of the words “Asiatic non-commissioned officer or any subordinate officer”, which occur in the second, sixth and seventh lines thereof, and the substitution therefor of the words “subordinate police officer below the rank of Assistant Sub-Inspector”.

Amendment of section 37 (1) of the Principal Ordinance.

13. Sub-section (1) of section 37 of the Principal Ordinance is hereby amended by the addition at the end thereof of the following proviso :—

“ And provided further that if the finger prints are taken of a person who has not previously been convicted of crime, and such person is discharged or acquitted by a court, all such finger prints and the photographs, if any, both negatives and copies, of such finger prints shall be forthwith destroyed or handed over to such person.”

14. Section 40 of the Principal Ordinance is hereby amended by the deletion of the words “or any subordinate officer” which occur in the third line thereof and by the

insertion of the word "or" between the word "constable" and the word "non-commissioned" which occur in the seventh line thereof.

15. Section 41 of the Principal Ordinance is hereby amended as follows :—

Amendment of section 41 of the Principal Ordinance.

(a) By the insertion of the following paragraph, to be numbered (3a), after paragraph (3) :—

" (3a) strikes, or uses or offers any violence against his superior officer, or uses threatening or insubordinate language to his superior officer; or";

(b) By the insertion of the word "negligently" before the word "allows" in the first line of paragraph (12);

(c) By the repeal of paragraph (18);

(d) By the insertion after paragraph (20) of the following paragraph, to be numbered (20a) :—

" (20a) is idle or negligent in the performance of his duties; or";

(e) By the repeal of paragraph (22) and the substitution therefor of the following :—

" (22) parades for duty dirty or untidy in his person, arms, clothing or equipment; or";

(f) By the insertion after paragraph (22) of the following paragraph, to be numbered (22a) :—

" (22a) makes or signs any false statement in any official record or document; or";

(g) By the insertion after paragraph (22a) of the following paragraph, to be numbered (22b) :—

" (22b) makes or joins in making any anonymous complaint; or".

16. Section 42 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Repeal and replacement of section 42 of the Principal Ordinance.

" 42. (1) A superior police officer or an inspector in charge of the Police Force in any place or an administrative officer in any place where there is no superior police officer or inspector in charge may inquire into the truth of

Punishments which may be awarded.

any charge under the last preceding section, and, if his decision is against the accused, he may impose on him any one or more of the following punishments :—

- (i) In the case of inspectors—
Reprimand ;
- (ii) In the case of assistant inspectors, chief sub-inspectors, sub-inspectors and assistant sub-inspectors—
 - (a) Reprimand ;
 - (b) Fine not exceeding one hundred and fifty shillings ;
- (iii) In the case of other subordinate police officers—
 - (a) Reprimand ;
 - (b) Imprisonment for a period not exceeding fifteen days with or without punishment drill, extra guards, fatigues or other duty ;
 - (c) Fine not exceeding one hundred and fifty shillings ;
 - (d) Reduction in rank or grade ;
 - (e) Confinement to barracks or lines for a period not exceeding twenty-one days.
- (iv) In the case of followers—
 - (a) Reprimand ;
 - (b) Fine not exceeding one hundred shillings ;
 - (c) Stoppage of increment ;
 - (d) Dismissal.

If any variance between the charge and the evidence appears to the Commissioner to be such that the accused has been thereby deceived or misled, the Commissioner may make an amendment of the charge on such terms as may be just and remit the amended charge to the said superior police officer or inspector in charge or administrative officer to inquire into the truth of such amended charge, or he may himself investigate any such charge.

Every sentence passed under this sub-section involving a reprimand on an inspector, assistant inspector, chief sub-inspector, sub-inspector and assistant sub-inspector or any imposition of a fine or reduction in rank or grade shall, before being carried into execution, be reported to the Commissioner, who may confirm or vary any such sentence.

Any punishment imposed by a superior police officer, inspector in charge or administrative officer under this section may be remitted by the Commissioner or mitigated or increased or altered by the Commissioner to any other punishment which may be imposed for the offence.

(2) The Commissioner may in respect of any conviction made by himself upon investigating any charge under section 41, or in respect of any conviction reported to him under sub-section (1) of this section, impose any one or more of the punishments prescribed in sub-section (1) of this section, and, further, may impose any one or more of the following punishments :—

- (i) In the case of subordinate police officers of or above the rank of assistant sub-inspector—
 - (a) Fine not exceeding two hundred shillings;
 - (b) Stoppage of increment;
 - (c) Reduction in rank or grade;
 - (d) Dismissal;

- (ii) In the case of any other subordinate police officer—
 - (a) Forfeiture of all pay which may be due to him;
 - (b) Forfeiture of any reward which he may have earned in the Police Force;
 - (c) Forfeiture of any advantage in regard to gratuity and pension on discharge which he may have earned by past service;
 - (d) Dismissal.

Provided that any subordinate police officer above the rank of assistant inspector, second grade, who has been awarded a punishment under paragraph (i) (d) of this sub-section, and who is dissatisfied with the decision of the Commissioner, may, within seven days after the decision has been communicated to him, appeal to the Governor in Council whose decision shall be final.

(3) An investigation by the Commissioner under sub-section (2) of this section shall be conducted in accordance with Rules made by the Governor in Council.”

17. Section 43 of the Principal Ordinance is hereby amended by the substitution of the words “Any superior police officer or subordinate police officer” for the words “Any commissioned officer, non-commissioned or subordinate officer” which occur in the first and second lines thereof.

Amendment of
section 43 of
the Principal
Ordinance.

Repeal of section 45 of the Principal Ordinance.

18. Section 45 of the Principal Ordinance is hereby repealed.

Amendment of section 48 of the Principal Ordinance.

19. Section 48 of the Principal Ordinance is hereby amended by the deletion of the proviso thereto and the substitution therefor of the following proviso :—

“ Provided that the dismissal of a subordinate police officer above the rank of assistant inspector, second grade, under this section shall be subject to the approval of the Governor.”

Amendment of section 52 of the Principal Ordinance.

20. Section 52 of the Principal Ordinance is hereby amended by substituting the word “imprisonment” for the word “confinement.”

Amendment of section 53 of the Principal Ordinance.

21. Section 53 of the Principal Ordinance is hereby amended by the insertion of the following words between the words “thereunder” and “shall” which occur in the third line thereof :—

“ and all fines levied for assaults on members of the Force.”

Amendment of section 55 of the Principal Ordinance.

22. Section 55 of the Principal Ordinance is hereby amended as follows—

(a) by the deletion of the words “ provisions of the European Officers Pensions Ordinance, 1927,” which occur in the second and third lines of sub-section (1) thereof, and the substitution therefor of the words “regulations for the time being in force for other European officers”;

(b) by deleting the words “pensions or” which occur in sub-sections (2) and (3) thereof.

Amendment of section 56 (1) of the Principal Ordinance.

23. Section 56 of the Principal Ordinance is hereby amended as follows—

(a) by the deletion of the words “pensions or” which occur between the words “of” and “gratuity” in the fourth line of sub-section (1) thereof;

(b) by the insertion of the word “of” after the word “gratuity” which occurs in the fourth line of sub-section (3) thereof;

(c) by the deletion of sub-section (4) thereof.

24. Sub-section (1) of section 57 of the Principal Ordinance is hereby amended by the deletion of the first four words thereof, and the substitution therefor of the following words :—

“Every subordinate police officer on joining”.

Amendment of section 57 of the Principal Ordinance.

25. Section 63 of the Principal Ordinance is hereby repealed.

Repeal of section 63 of the Principal Ordinance.

26. Section 64 of the Principal Ordinance is hereby amended by the insertion of the words “in accordance with such rates of pay as may be prescribed by the Governor in Council” after the word “application” which occurs in the tenth line thereof.

Amendment of section 64 of the Principal Ordinance.

27. Section 69 of the Principal Ordinance is hereby amended by the deletion of the proviso which occurs in sub-section (2) thereof.

Amendment of section 69 of the Principal Ordinance.

28. (1) Section 70 of the Principal Ordinance is hereby amended by substituting the words “fit and proper persons” for the words “residents of the neighbourhood” in sub-section (1), by deleting sub-section (3) and by re-numbering sub-sections (4) and (5) as (3) and (4) respectively.

Amendment of section 70 of the Principal Ordinance.

(2) Wherever in section 70 of the Principal Ordinance the words “special constable” or “special constables” occur, the words “special police officer” or “special police officers”, as the case may be, shall be deemed to be substituted therefor.

29. (1) Whenever an officer in charge of a police station, or a police officer making an investigation, has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search or cause search to be made for such thing in any place within the limits of such station.

Investigations and searches by police officers, and their powers to require attendance of witnesses.

(2) A police officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present

at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched, and, so far as possible, the thing for which search is to be made, and such subordinate officer may thereupon search for such thing in such place.

No. 11 of 1930.

(4) The provisions of the Criminal Procedure Code as to search warrants and the general provisions as to searches shall, so far as may be, apply to a search made under sub-sections (1), (2) and (3).

(5) An officer in charge of a police station or a police officer, not being below the rank of sub-inspector, making an investigation, may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made within the limits of his own station.

(6) Such officer, on being so required, shall proceed according to the provisions of sub-sections (1), (2), (3) and (4), and shall forward the thing found, if any, to the officer at whose request the search was made.

(7) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making an investigation to search or cause to be searched, any place in the limits of another police station in accordance with the provisions of sub-sections (1), (2), (3) and (4) as if such place were within the limits of his own station.

(8) Any officer conducting a search under sub-section (7) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate.

(9) Any police officer making an investigation into any offence may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required :

Provided that any person whose attendance is required under this sub-section who fails to attend at such time and place as may be appointed, or, having attended, refuses to answer all questions that may be lawfully put to him, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

(10) Any police officer making an investigation under this section or any police officer acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may, if he shall be of opinion that any person examined by him will or may be required as a witness, require such person to execute a bond to appear and give evidence before a magistrate if and when required to do so.

(11) Such person shall be bound to give his true name and address and answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

30. The Principal Ordinance is hereby amended as follows:—

Alterations of
designations
of certain
officers.

(1) By the deletion of the terms "Commissioned Officer" and "Commisioned Officers" wherever those terms occur therein and the substitution therefor of the terms "superior police officer" and "superior police officers" respectively;

(2) By the deletion of the terms "non-commissioned officer" and "non-commissioned officers" wherever those terms occur therein and the substitution therefor of the terms "subordinate police officer" and "subordinate police officers" respectively;

(3) By the deletion of the terms "subordinate officer" and "subordinate officers" wherever those terms occur therein and the substitution therefor of the terms "subordinate police officer" and "subordinate police officers" respectively;

(4) By the deletion of the terms "European Constable" and "European Constables" wherever those terms occur therein, and the substitution therefor of the terms "Assistant Inspector, Second Grade" and "Assistant Inspectors, Second Grade" respectively.

(5) By the deletion of the terms "European Police Constable" and "European Police Constables" wherever those terms occur therein and the substitution therefor of the terms "Assistant Inspector, Second Grade" and "Assistant Inspectors, Second Grade" respectively;

(6) By the deletion of the terms "non-commissioned officer or subordinate officer" and "non-commissioned officers or subordinate officers" wherever those terms occur therein and the substitution therefor of the terms "subordinate police officer" and "subordinate police officers" respectively;

(7) By the deletion of the terms "non-commissioned officer or any subordinate officer", "non-commissioned officers and subordinate officers" and "non-commissioned and subordinate officers" wherever those terms occur therein and the substitution therefor in each case of the term "subordinate police officer" and "subordinate police officers" respectively.

Amendment of designations used in Ordinances, etc.

31. Where in any Ordinance or in any order, rule, proclamation, notice, by-law, contract or other document any of the expressions mentioned in the first column of the Schedule to this Ordinance is used, there shall be substituted for such expression the similarly numbered expression in the second column of the said Schedule.

Consolidation of the Principal Ordinance and this Ordinance.

32. A copy of the Principal Ordinance with the amendments required by this Ordinance shall be prepared by the Clerk of the Legislative Council and deposited in the Supreme Court and the Government Printer shall print in accordance with the copy so certified all copies of the Principal Ordinance which are printed after the commencement of this Ordinance..

SCHEDULE.

<i>No.</i>	<i>First Column.</i>	<i>No.</i>	<i>Second Column.</i>
1.	European Constable	1.	Assistant Inspector, second grade.
2.	European Police Constable	2.	Assistant Inspector, second grade.
3.	Commissioned police officer	3.	Superior police officer.

ORDINANCE No. XLV of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

[15TH NOVEMBER, 1934.] Date of assent.

**An Ordinance to Confer Temporary Exclusive
Rights in Respect of Telegraphic Press Mes-
sages.**

15th November, 1934.

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 Telegraphic Press Short title.
Messages Ordinance, 1934.

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

“telegraph” means a line, wire, or other apparatus used
for the purpose of telegraphic or telephonic communication,
and includes a pneumatic tube, submarine or other cable and
any apparatus for transmitting or receiving messages or other
communications by means of signals, whether with or without
the aid of wires;

“telegraphic message” includes a message or other com-
munication sent by telegraph.

“telegraph office” includes any structure, room, place or
receptacle of any kind, appointed by authority of the Post-
master General or used by a telegraph company for the receipt,
despatch or delivery of telegraphic messages;

“time of publication” means the moment when the first
copies leave the premises in which they have been printed.

3. When any person publishes in any newspaper or other
printed paper published or circulated in the Colony or supplies
for such publication any message for the right to publish which
payment or equivalent consideration has been given and which
has been transmitted by telegraph from any place within or
outside the Colony and lawfully received by him, no other
Protection of
certain tele-
graphic
messages from
publication
within a
certain period.

person shall, without the written consent of the first-mentioned person or his agent thereto lawfully authorized, print or publish, or cause to be printed or published, such message or the substance thereof or any extract therefrom until a period of eighty-four hours has elapsed from the time of first publication; and the publication of the whole or any part of such message or the substance thereof, shall be deemed to be a publication of the same:

Provided that—

- (a) such period shall not extend beyond ninety-six hours from the time when such message was received at a telegraph office;
- (b) the publication of any similar message lawfully received by any other person shall not be deemed or taken to be a publication of such first-mentioned message within the meaning of this Ordinance; and
- (c) no telegraphic message published as aforesaid shall be protected under this Ordinance unless it is printed with a heading which indicates that such message has been received by telegraph and unless the time and the date of its receipt at a telegraph office are stated in such heading, which heading, together with the date of publication of the newspaper, shall be prima facie evidence of the time of receipt and date of publication, respectively, of such message:

Provided further that bona fide comment on such message by a weekly or monthly publication shall not be considered an infringement of this section so long as the said comment does not appear within twelve hours after publication of the said message.

Transmission of protected messages for publication prohibited.

4. During the period in which a telegraphic message is protected from publication under section 3 hereof, no person shall, without the written consent of the person whose consent is necessary under that section, tender for transmission for purposes of publication the intelligence contained in that message or the substance thereof or any extract therefrom.

Presumptions in prosecutions under Ordinance.

5. In any prosecution under this Ordinance the production of any document which—

- (a) purports to be a telegraphic message;
- (b) contains the intelligence published or supplied for publication; and

(c) is addressed to and has been delivered to the person publishing or to some person on his behalf by an officer of the Posts and Telegraphs Department or a telegraph company,

shall be prima facie evidence that the message published or supplied for publication is a message published under the protection of this Ordinance; and proof that any person is the responsible editor of any newspaper in which there has been any publication contrary to the provisions of this Ordinance shall be prima facie evidence that such person wilfully caused the unlawful publication.

6. Any person who contravenes any provision of this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty pounds; and in the case of a second or subsequent conviction to a fine not exceeding fifty pounds. Penalties.

ORDINANCE No. XLVI of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

Date of assent. [15TH NOVEMBER, 1934.]

**An Ordinance to Provide for the Control of the
Production of Tea in the Colony.**

Date of commencement *15th November, 1934.*

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

Short title. **1.** This Ordinance may be cited as the Tea Ordinance,
1934.

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

“tea” means the plant known botanically as *Camellia
Thea* ;

“the Director” means the Director of Agriculture.

Licences to plant tea. **3.** (1) After the date of the coming into operation of this
Ordinance no person shall plant tea on any land in the Colony
which has not been planted with tea prior to such date unless
he is in possession of a licence issued to him in that behalf by
the Director.

(2) Every such licence shall specify the acreage of such
land on which tea may be planted by virtue of such licence,
and no licensee under this Ordinance shall plant tea on any
such land in excess of the acreage so specified.

(3) The total area of land in the Colony in respect of
which licences may be issued under this section shall at no
time exceed one thousand acres.

Replanting of old area. **4.** (1) No tea shall be replanted on land, which has been
planted with tea prior to the date of the coming into operation
of this Ordinance, unless such land has been properly main-
tained. All such replanting shall be limited to the replacement
of tea bushes which have been uprooted from such land.

(2) The owner, occupier or manager of any land which has been planted with tea prior to the date of the coming into operation of this Ordinance shall supply the Director with all such details relating to such land and to the tea planted thereon as the Director may, in writing, require.

(3) The Director shall cause a register to be kept containing a record of all information supplied in accordance with the provisions of the last preceding sub-section.

(4) If any person required to make a return under sub-section (2) of this section—

(a) refuses or without lawful excuse fails to make such return within a period of thirty days after the receipt of a written notice requiring him to make such return; or

(b) makes or causes to be made a return which is false in any particular,

he shall be guilty of an offence against this Ordinance.

5. The export of tea seed and other planting materials such as cuttings from the Colony is prohibited. Prohibition of export of tea seed.

6. (1) After the date of the coming into operation of this Ordinance no person shall import tea seed into the Colony unless he is in possession of a written permit issued to him in that behalf by the Director. Restriction on import of tea seed.

(2) Every such permit issued under this Ordinance shall specify the amount and description of tea seed which may be imported by virtue of such permit.

7. Every licence and permit issued under this Ordinance shall be in such form and subject to such conditions as may be prescribed by the Director. Form and conditions of licences and permits.

8. The Director may, in his discretion, refuse to issue a licence or permit under this Ordinance on any ground which may appear to him to be sufficient, or he may issue a licence or permit subject to such conditions as he may think fit. Any person aggrieved by any decision of the Director under this section may appeal in writing to the Governor within fourteen days of the date of such refusal. The decision of the Governor on any such appeal shall be final. Power of Director to refuse licences and permits.

9. No person to whom a licence or permit under this Ordinance has been issued shall lend, transfer, or assign the same to any other person, save with the written permission of the Director endorsed on the licence or permit. Licences and permits not to be assigned.

Power to enter to inspect.

10. (1) Every licensee and permit holder under this Ordinance and every owner, occupier or manager of any land which has been planted with tea prior to the date of the coming into operation of this Ordinance shall at all times allow the Director or any person authorized by the Director to enter upon any land or into any buildings occupied by such licensee, permit holder, or owner, occupier, or manager, and to make any such inspection and inquiry as may be necessary for ascertaining whether the provisions of this Ordinance have been or are being complied with.

Obstruction to be an offence.

(2) Any person who hinders or obstructs the Director or any person authorized by him in the exercise of any power under this Ordinance or who fails to give any information required in connection with this Ordinance shall be guilty of an offence against this Ordinance.

Returns.

11. Every licensee and permit holder under this Ordinance shall submit such returns relating to the cultivation of tea at such periods and to such persons as the Director may from time to time require.

Penalty.

12. Any person who contravenes or fails to comply with any of the provisions of this Ordinance or who fails to observe any of the conditions or restrictions subject to or upon which any licence or permit has been issued under this Ordinance shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first class for every such offence to a fine not exceeding two hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Offences committed by bodies corporate.

13. Where any offence against this Ordinance committed by a body corporate is proved to have been committed with the consent or approval 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.

Powers of Director as to tea planted without licence or in excess of licensed acreage.

14. (1) When any person has been convicted of an offence which consists in or includes—

- (a) the planting of tea on land which has not previously been planted with tea without a licence issued to him in that behalf as required by section 3 of this Ordinance; or

- (b) the replanting of tea on land in contravention of the provisions of sub-section (1) of section 4 of this Ordinance; or
- (c) the planting of tea on an acreage exceeding that specified in a licence,

the Director may require such person, within a stated period of time, to uproot all tea which has been so planted.

(2) If any such person fails within such period of time to carry out the requirements of the Director, it shall be lawful for the Director, or any officer of his Department authorized by him, to enter upon the lands occupied by such person and to uproot at the expense of such person all tea so planted without licence or planted in excess of the licensed acreage, and any such expense may be recovered by the Director as a civil debt.

15. This Ordinance shall continue in force until the 31st day of March, 1938, and shall then expire: 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.

Duration of
Ordinance.

ORDINANCE No. XLVII of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

Date of assent.

[15TH NOVEMBER, 1934.]

**An Ordinance to Amend the Non-European
Officers' Pensions Ordinance, 1932.**

Date of
commencement

15th November, 1934.

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

Short title.

1. This Ordinance may be cited as the Non-European Officers' Pensions (Amendment) Ordinance, 1934, and shall be read as one with the Non-European Officers' Pensions Ordinance, 1932, hereinafter referred to as the Principal Ordinance.

No. 53 of 1932.

Amendment of
section 17
of the
Principal
Ordinance.

2. Section 17 of the Principal Ordinance is hereby amended by the renumbering of the section as section 17 (1) and by the addition of the following as sub-section (2) :—

Gratuity not
to be subject
to estate duty
or Public
Trustee's fees.
No. 13 of 1926.
No. 7 of 1925.

“(2) Notwithstanding anything contained in the Estate Duty (Consolidation) Ordinance, 1926, or the Public Trustee's Ordinance, 1925, no gratuity granted under sub-section (1) hereof shall be subject to any estate duty or to the payment of the Public Trustee's fees or charges.”

ORDINANCE No. XLVIII of 1934

Assented to in His Majesty's name this fifteenth day of November, 1934.

J. BYRNE,
Governor.

[15TH NOVEMBER, 1934.] Date of assent.

An Ordinance relating to the Re-Transfer of Property to a Certain German Mission.

By Notice.

Date of commencement.
Preamble.

WHEREAS by Article 438 of the Treaty of Peace between the Allied and Associated Powers and Germany signed at Versailles on the twenty-eighth day of June one thousand nine hundred and nineteen it is provided and agreed that where Christian religious missions were being maintained by German Societies or persons in territory belonging to any one of the Allied and Associated Powers the property which such Missions or Missionary Societies possessed should continue to be devoted to Missionary purposes and that in order to ensure the due execution of this undertaking the Allied and Associated Governments would hand over such property to Boards of Trustees to be appointed by or approved by the Governments and composed of persons holding the faith of the Mission whose property is involved :

AND WHEREAS certain property in the Colony was being maintained by German Societies or persons for missionary purposes and the said property is by the German Missions Ordinance, 1924, vested in such trustees and upon such trusts as the Secretary of State may appoint and determine :

No. 5 of 1924.

AND WHEREAS by a Deed made the thirtieth day of September one thousand nine hundred and twenty-six between the Secretary of State of the one part and the Africa Inland Mission Trust Limited of 30 John Street Bedford Row in the County of London of the other part the Secretary of State in exercise of the powers vested in him by the said German Missions Ordinance, 1924, appointed the said Africa Inland Mission Trust Limited (hereinafter called "the Trustees") as a Trustee and directed that the Trustees should hold the property in the Colony of the Leipzig Evangelical Mission upon and for the trusts and purposes therein set forth :

AND WHEREAS the said German Missions Ordinance, 1924, was repealed by the German Missions (Repeal) Ordinance 1931 :

No. 8 of 1931.

AND WHEREAS by an Agreement made on or about the 12th day of November, 1930, between the Trustees of the one part and the Leipzig Lutheran Mission of the other part, the Trustees consented, *inter alia*, to the said Deed dated the 30th day of September, 1926, being revoked :

AND WHEREAS it is deemed expedient to empower the parties to the said Agreement to give effect to the said Agreement :

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

short title
and
commencement

1. This Ordinance may be cited as the German Missions (Revesting) Ordinance, 1934, and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Revesting of
certain mission
property.

2. (1) All property now vested in the Trustees under and by virtue of the said Deed made the 30th day of September, 1926, shall by virtue of this Ordinance, be vested in the said Leipzig Lutheran Mission.

(2) The said Deed is hereby revoked.

Release of
trustees.

3. This Ordinance shall operate as a complete release and discharge of the Trustees in respect of any acts, omissions or liability on the part of them or their agents relating to the property mentioned in section 2 of this Ordinance.

ORDINANCE No. XLIX of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

[15TH NOVEMBER, 1934.] Date of assent.

**An Ordinance to Amend the Bankruptcy
Ordinance, 1930.**

15th November, 1934.

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 Bankruptcy (Amendment) Ordinance, 1934, and shall be read as one with the Bankruptcy Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 32 of 1930.

2. Sub-section (3) of section 89 of the Principal Ordinance is hereby amended by the insertion after the word "bank", which occurs in the fourth line thereof of the following :—

Amendment of
section 89 (3)
of the
Principal
Ordinance.

"The Official Receiver may in his discretion invest any money paid to the credit of such fund in British Government securities."

ORDINANCE No. L of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

Date of assent. [15TH NOVEMBER, 1934.]

**An Ordinance to Amend the Diseases of Animals
Ordinance.**

Date of commencement *15th November, 1934.*

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

Short title. **1.** This Ordinance may be cited as the Diseases of Animals (Amendment) Ordinance, 1934, and shall be read as one with the Diseases of Animals Ordinance (Chapter 157 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Amendment of section 2 of the Principal Ordinance. **2.** Section 2 of the Principal Ordinance is hereby amended as follows—

- (a) by the substitution of the words "birds and bees" for the words "ostriches and poultry" which occur in the definition of the term "stock";
- (b) by the insertion of the following definition after the definition of the term "stock":—

" 'Birds' include domestic fowls, turkeys, geese, ducks, guinea fowls, pea fowls, pigeons, pheasants, parrots, ostriches, and the eggs of such birds."

ORDINANCE No. LI of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

[15TH NOVEMBER, 1934.] **Date of assent.**

**An Ordinance to Amend the Native Tribunals
Ordinance, 1930.**

31st December, 1933.

**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, 1934, 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 44 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

**Repeal and
replacement of
section 44 of
the Principal
Ordinance.**

“44. This Ordinance shall continue in force until the 31st day of December, 1936, and shall then expire :

Provided that the Governor may by proclamation with the approval of the Legislative Council and of the Secretary of State declare that this Ordinance shall remain in force until a date to be fixed in such proclamation or until repealed.”

3. This Ordinance shall be deemed to have come into operation on the 31st day of December, 1933.

**Date of
commencement**

ORDINANCE No. LII of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Governor.

Date of assent. [15TH NOVEMBER, 1934.]

**An Ordinance to Amend the Cotton (Tax)
Ordinance.**

Date of commencement *15th November, 1934.*

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

Short title. **1.** This Ordinance may be cited as the Cotton (Tax) (Amendment) Ordinance, 1934, and shall be read as one with the Cotton (Tax) Ordinance (Chapter 60 of the Revised Edition) as amended by the Cotton (Tax) (Amendment) Ordinance, 1927, hereinafter together referred to as the Principal Ordinance.

No. 2 of 1927.

Repeal and replacement of section 2 of the Principal Ordinance. Tax.

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

“2. (1) A tax shall be payable in respect of all cotton ginned in any part of the Colony to which this Ordinance applies.

(2) The tax shall be such amount as the Governor in Council shall from time to time proclaim as being payable in respect of cotton ginned in the various provinces and districts of the Colony.

(3) The Governor in Council may at any time by proclamation vary the amount of the tax payable in all or any such provinces and districts.”

Repeal of Schedule.

3. The Schedule to the Principal Ordinance, as repealed and replaced by Government Notice No. 29 of 1933, is hereby repealed.

ORDINANCE No. LIII of 1934

Assented to in His Majesty's name this fifteenth day of
November, 1934.

J. BYRNE,
Gouverneur.

[15TH NOVEMBER, 1934.] Date of assent.

**An Ordinance to Provide for the Preservation of
Objects of Archaeological and Palaeontological
Interest.**

15th November, 1934.

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 Preservation of **Short title.**
Objects of Archaeological and Palaeontological Interest Ordin-
ance, 1934.

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

“authority” includes all Provincial Commissioners,
officers in charge of districts not included in any province and
any person or body of persons authorized by the Governor to
perform the duties of an authority under this Ordinance;

“maintain” and “maintenance” include the fencing,
covering in, repairing, restoring and cleansing of a monument,
and the doing of any act which may be necessary for the pur-
pose of maintaining a monument or of securing convenient
access thereto;

“monument” means—

(a) any object of archaeological or palaeontological
interest, and

(b) any area of land in which any such object is believed
to exist,

which the Governor has by notice in the Gazette declared
under section 6 to be a monument.

“object of archaeological or palaeontological interest”
means any structure, erection, memorial, tumulus, cairn, place
of interment, pit-dwelling, trench, fortification, irrigation
work, mound, excavation, cave, rock, rock drawing, painting, or
sculpture, inscription, monolith, or any remains thereof, fossil
remains of man or animals or plants or any bed or beds con-
taining such fossil remains thereof, or any object (or any

remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, or historic interest, and includes—

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;

“owner” includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee :

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Prohibition of certain acts unless authorized by permit.

3. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule hereto.

(2) The Colonial Secretary shall, before issuing a permit under this section, satisfy himself that the applicant is competent both by training or experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in his discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) In every permit issued under this section there shall be implied an undertaking on the part of the permit-holder that he, or the institution which he represents, will, within a period of two years after the completion of the exploration or excavation authorized by the permit or within such longer period as the Colonial Secretary may in writing approve, produce an adequate scientific report or publication on the results of the exploration and/or excavation, as the case may be, and will deposit with the Governor two copies of such report or publication.

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(4) The Colonial Secretary may at any time, without assigning any reason, revoke a permit given under this section.

4. A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

A permit may specify limitations and conditions.

5. (1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the district officer in charge of the district.

Discoverer of any object to inform authorities.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating the precise site and the circumstances of the discovery to the district officer in charge of the district, and shall, if so instructed by such district officer, deliver such object to such district officer.

(3) The district officer shall forthwith notify the Colonial Secretary of any discovery in respect of which he has received notice under the provisions of this section.

(4) Any person who fails to comply with the provisions of sub-section (1) or sub-section (2) of this section, as the case may be, shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

6. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Power to declare object to be monument.

(2) A copy of every notice published under sub-section (1) of this section shall forthwith be posted by an authority in a conspicuous place on or near the object or on the area to which it relates.

(3) On the expiration of the said period of one month, the Governor, after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Ordinance.

No. 17 of 1927. (5) Any monument or antiquity declared, under the provisions of the Ancient Monuments Preservation Ordinance, 1927, to be a protected monument or an antiquity, as the case may be, shall be deemed to be a monument within the meaning of this Ordinance.

Acquisition
of rights in
or guardian-
ship over
monuments.

7. (1) An authority may, with the sanction of the Governor, purchase or take a lease of any monument.

(2) An authority may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute an authority the guardian of such monument, and an authority may, with the sanction of the Governor, accept such guardianship.

(4) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the owner shall, except as expressly provided in this Ordinance, have the same estate, right, title and interest in and to such monument as if the authority had not been constituted guardian thereof.

(5) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the provisions of this Ordinance relating to agreements executed under section 8 shall apply to the written instrument executed under the said sub-section.

(6) Where a monument is without an owner, an authority may, with the sanction of the Governor, assume the guardianship of such monument.

Preservation
of monuments
by agreement.

8. (1) An authority may, with the sanction of the Governor, enter into a written agreement with the owner of any monument for the protection or preservation of such monument.

(2) An agreement under this section may provide for all or any of the following matters :—

- (a) The maintenance of the monument;
- (b) the custody of the monument and the duties of any person who may be employed in connection therewith;
- (c) the restrictions of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;
- (d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;
- (e) the notice to be given to the authority in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the authority to purchase such land or any specified portion of such land at its market value;
- (f) the payment of any expenses incurred by the owner or by the authority in connection with the protection or preservation of the monument;
- (g) the procedure relating to the settlement of any dispute arising out of the agreement;
- (h) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the authority; and
- (i) the removal subject to the provisions of this Ordinance of the monument to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Governor and with the consent of the owner.

(4) Subject to the sanction of the Governor, an authority may terminate an agreement under this section on giving six months' notice in writing to the owner.

(5) The owner may terminate the agreement under this section on giving six months' notice to the authority.

(6) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(7) Any rights acquired by the authority in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability.

9. If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by the last preceding section.

Enforcement of agreement.

10. (1) If an authority apprehends that the owner or occupier of a monument intends to build on or near the site of such monument in contravention of the terms of an agreement for its protection or preservation under section 8 of this Ordinance, the authority may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the protection, preservation or maintenance of a monument under section 8 refuses to do any act which is in the opinion of the authority necessary to such protection, preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner.

(3) A person aggrieved by an order made under this section may appeal to the Governor, who may cancel or modify it and whose decision shall be final.

Compulsory purchase of monuments.

11. (1) If the Governor apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may proceed to acquire such monument under the provisions of the Indian Land Acquisition Act, 1894, as applied to the Colony, as if the preservation of such monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by subsection (1) of this section shall not be exercised in case of—

- (a) any monument which, or any part of which, is periodically used for religious observances; or
- (b) any monument which is the subject of a subsisting agreement executed under section 8 of this Ordinance.

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(3) In any case other than the cases referred to in the last preceding sub-section the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 8 has failed, within such reasonable period as the Governor may fix in this behalf, to enter into an agreement under the said section or has terminated or given notice of his intention to terminate such an agreement.

12. (1) Every monument in respect of which an authority has acquired any of the rights mentioned in section 7 or which has been compulsorily purchased under section 11 shall be maintained by the authority by which such rights were acquired or by such authority as may be appointed in that behalf by the Governor, as the case may be.

Maintenance
of
monuments.

(2) When an authority has accepted the guardianship of a monument under section 7, such authority shall, for the purpose of maintaining such monument have access to the monument at all reasonable times for the purpose of inspection and for the purpose of bringing such materials and doing such acts as the authority may consider necessary for the maintenance or preservation thereof :

Provided that the right of access conferred on an authority under this sub-section shall be deemed to extend to the duly authorized agents, inspectors and workmen of such authority.

13. An authority may receive voluntary contributions towards the cost of maintaining a monument and may, subject to the approval of the Governor, give orders as to the management and application of any funds so received :

Voluntary
contributions.

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

14. (1) A place of worship or tomb maintained by an authority under this Ordinance shall not be used for any purpose inconsistent with its character.

Protection of
places of
worship, etc.,
from misuse
pollution or
desecration.

(2) When an authority has, under section 7, purchased or taken a lease of any monument, or has accepted a gift or bequest thereof, or has accepted the guardianship thereof, and such monument or any part thereof is periodically used for religious worship or observances by any community, the authority shall make due provision for the protection of such monument or such part thereof from pollution or desecration—

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- (a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used; or
- (b) by taking such other action as the authority may think necessary in this behalf.

**Relinquish-
ment of
rights in a
monument.**

15. Subject to the sanction of the Governor, an authority may—

- (a) where rights have been acquired by such authority in respect of a monument under this Ordinance by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or
- (b) relinquish any guardianship which such authority has accepted under this Ordinance.

**Right of access
by public to
monuments.**

16. Subject to such rules as may be made by the Governor in Council under section 24, the public shall have a right of access to any monument maintained by an authority under this Ordinance.

Offences.

17. Save as is provided in this Ordinance, any person who destroys, removes, injures, alters, defaces or imperils a monument, or any object of archaeological or palaeontological interest, and any owner or occupier who contravenes an order made under sub-section (1) of section 10, and any person who contravenes any of the terms and conditions imposed in a permit granted under this Ordinance, and any person who contravenes the provisions of sub-section (1) or (3) of section 3 or sub-section (1) of section 19 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

**Permit to
excavate or
remove a
monument.**

18. Notwithstanding anything contained in this Ordinance, where the Colonial Secretary is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, he may grant a permit to any person to excavate and/or remove to a place within the Colony any such monument, or any part thereof, on

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such terms and subject to such conditions as he may think fit. Such permit shall, as far as is practicable, be in the Form B set out in the Schedule hereto.

19. (1) No monument or object of archaeological or palaeontological interest may be removed from the Colony unless such removal has been authorized by a permit issued by the Colonial Secretary. Such permit shall, so far as is practicable, be in the Form C set out in the Schedule hereto.

Permit to
remove any
object or
monument
from Colony.

(2) The Colonial Secretary may issue a permit subject to such terms and conditions, which may include the surrender to the Crown of a portion of the monument or object of archaeological or palaeontological interest, as he may deem fit, or he may, without assigning the reason, refuse to issue a permit.

(3) Where under the provisions of the preceding subsection any portion of a monument or of an object of archaeological or palaeontological interest has been surrendered to the Crown, the Governor may deposit the portion so surrendered in any museum or similar institution in the Colony or elsewhere.

(4) An application for a permit under this section shall be made in writing to the Colonial Secretary at least thirty days before the date of the proposed removal and shall contain a full description of the monument or object of archaeological or palaeontological interest in respect of which the application is made. Before issuing a permit under this section, the Colonial Secretary may cause an inspection to be made and may cause the monument or object of archaeological or palaeontological interest to be sealed :

Provided that no such permit shall authorize the removal from the Colony of any monument or object of archaeological or palaeontological interest except through a Customs port of entry and such permit shall be surrendered to a Customs officer before export is effected. A customs officer shall detain any monument or object of archaeological or palaeontological interest until such permit shall have been surrendered. Any monument or object of archaeological or palaeontological interest may be confiscated and disposed of as the Governor may direct if such permit is not produced and surrendered within a reasonable period of time.

20. (1) A district officer in charge of a district, and any other person specially authorized by the Governor, may, at any time, inspect work being done in connection with objects of archaeological or palaeontological interest or a monument, and may order cessation of such work pending further orders from the Governor. Such district officer or such other person shall forthwith report the action he has taken to the Colonial Secretary, and shall at the same time furnish to the Colonial Secretary an inspection report.

(2) Any person who fails to comply with an order issued under this section shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Assessment of
market value.

21. The market value of any property which the Governor is empowered to purchase at such value under this Ordinance shall, where any dispute arises touching the amount of such market value, be ascertained in the manner provided by the Indian Land Acquisition Act, 1894, sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable.

Exemption
from stamp
duty.

22. Any instrument executed under section 7 or section 8 of this Ordinance shall be exempt from stamp duty.

Protection of
public servants
acting under
the Ordinance.

23. No suit for compensation and no criminal proceedings shall lie against any public servant or authority in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Ordinance.

Power to
make rules.

24. The Governor in Council may make rules for carrying out any of the purposes of this Ordinance.

Repeal.
No. 17 of 1927.
No. 39 of 1932.

25. The Ancient Monuments Preservation Ordinance, 1927, as amended by the Ancient Monuments Preservation (Amendment) Ordinance, 1932, is hereby repealed.

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No. LIII

SCHEDULE.

FORM A.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST ORDINANCE, 1934.

(Sections 3 and 4.)

PERMIT TO SEARCH FOR AND/OR TO REMOVE WITHIN THE COLONY OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST.

Subject to the limitations and conditions set out hereunder,, of, is hereby authorized to search in the Colony either by means of excavation or surface operations for objects of archaeological and palaeontological interest and to remove such objects from the site on which they are found to

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions :

No. LIII

Preservation of Objects of Archaeological and Palaeontological Interest 1934

FORM B.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 18.)

PERMIT TO EXCAVATE OR REMOVE A MONUMENT
WITHIN THE COLONY.

Subject to the terms and conditions set out hereunder,
....., of.....
is hereby granted permission to excavate and/or to remove to
.....the following monument :

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions :

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No. LIII

FORM C.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST ORDINANCE, 1934.

(Section 19.)

PERMIT TO REMOVE FROM THE COLONY AN OBJECT OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST OR A MONUMENT.

Subject to the terms and conditions set out hereunder, of..... is hereby authorized to remove from the Colony by air/ship through the port of the following object(s) of archaeological and palaeontological interest/monument(s) to

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions :

Amended

ORDINANCE No. LIV of 1934

Assented to in His Majesty's name this thirty-first day of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

An Ordinance to Consolidate the Law Relating to the Advancement and Control of the Coffee Industry.

31st December, 1934

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 Coffee Industry Ordinance, 1934. Short title.

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

“Board” means the Board established under this Ordinance;

“buni” means coffee dried in the fruit or cherry;

“coffee” means the fruits or parts thereof of *Coffea* species and includes “clean coffee”, “parchment coffee”, “buni” and roasted and/or ground berries;

“coffee dealer” includes any person who buys or sells, cleans or grades commercially in a factory other than on the plantation, or otherwise deals in, unroasted coffee;

“coffee plantation” includes any area of land or contiguous areas of land under single ownership on which coffee is grown for the production of berries, or for the growing and sale of coffee plants;

“coffee planter” includes any person who owns, manages or occupies a coffee plantation;

“Conference” means any meeting of delegates, appointed by coffee planters licensed under the provisions of this Ordinance, convened for the purpose of the election of members of the Board as provided under section 3 of this Ordinance and for the consideration of any other matters affecting the coffee industry;

“Director” means the Director of Agriculture;

“export” means export from the Colony to a place outside the limits of the Protectorate of Uganda or of the Tanganyika Territory or of the Colony;

“inspector” means any magistrate, European police officer or any European officer of the Department of Agriculture;

“trade samples” means samples of coffee not exceeding ten pounds in weight.

**Constitution
of the Board.**

3. (1) There shall be constituted a Board to be known as “the Coffee Board”, which shall consist of—

- (a) the Director;
- (b) two members, to be appointed by the Governor, of whom one shall be a member of the Department of Agriculture;
- (c) two licensed coffee dealers to be elected at the conference of delegates from organizations representing trade interests;
- (d) three coffee planters who shall be elected at the Conference by coffee planters who own, occupy or manage coffee plantations situated to the east of the Meridian of longitude thirty-six degrees twenty-five minutes east of Greenwich;
- (e) three coffee planters who shall be elected at the Conference by coffee planters who own, occupy and manage coffee plantations situated to the west of the Meridian of longitude thirty-six degrees twenty-five minutes east of Greenwich:

(2) The first appointments of members of the Board under paragraphs (c), (d) and (e) of sub-section (1) of this section shall be made by the Governor on the recommendation of the Director. The Board shall convene a Conference in the second half of each calendar year after the passing of this Ordinance at which elections of such members to the Board as is provided in sub-section (5) of this section shall be made.

(3) The Board shall elect a chairman and a vice-chairman annually.

(4) Members of the Board other than those referred to in paragraphs (c), (d) and (e) of sub-section (1) of this section shall hold office during the Governor’s pleasure.

(5) The following provisions shall apply in respect of the members elected at each Conference :—

- (a) of the two members of the Board elected under the provisions of paragraph (c) of sub-section (1) of this section, one shall retire annually ;
- (b) of the three members of the Board elected under the provisions of paragraph (d) of sub-section (1) of this section, one shall retire annually ;
- (c) of the three members of the Board elected under the provisions of paragraph (e) of sub-section (1) of this section, one shall retire annually ;
- (d) the order of retirement of members under paragraphs (a), (b) and (c) of this sub-section shall be by rotation which shall be decided by the Board by ballot ;
- (e) any member retiring as aforesaid shall be eligible for re-election ;
- (f) a candidate for election under paragraph (d) or (e) of sub-section (1) of this section shall lodge with the Secretary of the Board, at least thirty days before the date of the election, a nomination paper signed by not less than seven coffee planters.

(6) In any case in which the Board is satisfied that any member of the Board is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office the Board may appoint some fit person to be a deputy to act for that member during such incapacity ; and any deputy shall, while he acts as such, have all the powers and authorities of the member for whom he is so acting.

(7) In the absence of the chairman and vice-chairman from any meeting of the Board a chairman for such meeting shall be chosen by the members present.

(8) The chairman of a meeting shall have a casting vote in addition to a deliberative vote.

(9) The Board shall fix the number of members required for a quorum.

(10) The chairman shall, upon receipt of a requisition signed by three members of the Board calling upon him to do so, within one month after the date of such requisition convene a meeting of the Board.

(11) The Board shall be a body corporate having perpetual succession and a common seal, and shall be capable in law of suing and being sued, and of purchasing, holding and alienating land and other property movable or immovable.

Meetings.

(12) The Board shall meet not less than once in three months.

(13) The Board may, subject to the provisions of this Ordinance, make By-laws governing—

- (a) the conduct of the business of the Board; and
- (b) the election of delegates to the Conference.

Licence to deal in coffee.

4. (1) No person shall conduct the business of a coffee dealer unless and until he is licensed in that behalf by the District Commissioner of the district in which his principal business premises are situated :

Provided that no retail seller of provisions shall require a licence for the purchase of clean coffee from a licensed coffee dealer or coffee planter or for the sale of such coffee in retail quantities not exceeding five pounds in weight, and that such retail seller shall keep a register of all purchases of such coffee :

And provided further that no licence shall be required by any person who deals only in coffee grown outside the Colony.

(2) The issue of such licence shall be in the discretion of the District Commissioner who, before issuing any such licence, shall consult the Director thereon. It shall be competent for the District Commissioner to prescribe as a condition of the issue of a licence that it shall be endorsed by the District Commissioner of every district in which business under the licence is to be carried on.

(3) Every such licence shall specify the premises on which such business may be carried on.

(4) Every licence under this section shall be issued annually and, subject to any cancellation which may be imposed under section 16, shall remain in force until the thirtieth day of June next following the date on which it was issued.

(5) There shall be payable in respect of every such licence and every renewal thereof a fee of ten pounds :

Provided that only one licence fee shall be payable in respect of any or all premises in which the business of the licensee is carried on throughout the Colony.

5. (1) Every licensee under section 4 of this Ordinance shall keep on his licensed premises a register in English or Kiswahili of all purchases or sales of coffee made in pursuance of his licence, and shall within forty-eight hours of each such sale or purchase insert in such register the name and address of each vendor or purchaser of coffee, as the case may be, the quantity purchased or sold and the date of the transaction :

Licensee to keep books.

Provided that if the method of dealing in or disposing of coffee be otherwise than by purchase or sale the licensee shall enter in the register the method of such dealing or disposal and the date thereof.

(2) It shall be lawful for an inspector to enter upon the premises of any coffee planter or coffee dealer or retail seller of provisions and inspect all coffee kept therein and to demand the production of and inspect any licence or any register kept in pursuance of this section, and any obstruction or denial of entry and any refusal to produce such licence or register shall be deemed to be an offence.

6. Every licensee under section 4 of this Ordinance shall always keep, exhibited in English characters not less than three inches in size, over the outer door of his shop or place of business, his name and the words "licensed coffee dealer", in English or Kiswahili.

Licensee to exhibit his name, etc.

7. Every licensed dealer shall submit such returns at such periods to such persons as the Governor by rule may prescribe.

Licensee to submit return.

8. Nothing in section 4 of this Ordinance contained shall be deemed to prohibit any licensed coffee planter from selling the produce of his own plantation to a licensed coffee dealer, or to any person for his own consumption, or for planting, or from exporting the same from the Colony :

Saving for sale to licensed dealer.

Provided that such licensed coffee planter shall enter in a book to be kept for that purpose a full and true account of all such sales and dealings and shall produce such book for inspection upon demand made by an inspector.

Provided further that any person may without a licence buy from a licensed coffee dealer or licensed coffee planter coffee for his own consumption or for planting, but for no other purpose.

Coffee planters
licences.

9. (1) No person shall plant or maintain any coffee plantation unless and until he is in possession of a licence issued to him in respect of such plantation by the District Commissioner of the district in which such coffee plantation is situated.

(2) There shall be payable in respect of every licence issued under this section a fee of thirty shillings.

(3) Every licence under this section shall be issued annually and shall expire on the thirtieth day of June next following the date on which it was issued.

(4) The issue of licences under this section shall be in the discretion of the District Commissioner who, before issuing any such licence, shall consult the Director thereon: Provided that no such opinion shall be necessary in the case of coffee planters previously licensed under the Registration of Coffee Plantations and Coffee Dealers Ordinance.

Cap. 152.

(5) The provisions of this section shall not apply to any coffee plantation in any native reserve.

Levy.

10. (1) It shall be lawful for the Governor, on the recommendation of the Board, from time to time by proclamation in the Gazette to impose a levy on all coffee produced in and exported from the Colony, hereinafter referred to as "the levy": Provided that the amount of such levy shall in no event exceed one shilling per one hundredweight or part of a one hundredweight of coffee, and provided also that no levy shall be imposed in respect of buni:

Provided further that, unless and until the Governor may impose a levy under the provisions of this section, the levy last imposed by the Governor under the powers conferred upon him by sub-section (1) of section 10 of the Coffee Industry Ordinance, 1932, shall remain in full force and effect:

No. 50 of 1932.

Provided further that nothing in this section contained shall prohibit any licensed coffee planter or coffee dealer or the Board from exporting trade samples without payment of such levy.

(2) No levy shall become operative until two months after the date of the proclamation imposing it.

(3) As from the date on which a levy becomes operative under sub-section (1) of this section no coffee produced in the Colony shall be exported from the Colony unless the levy has been paid to the Commissioner of Customs in respect of such coffee and any person who exports or attempts to export any such coffee from the Colony without paying such levy thereon shall be guilty of an offence.

11. (1) There shall be established a fund, to be known as "the coffee levy fund" which shall consist of all moneys paid in respect of the levy, and licences issued under ~~section 4~~ of this Ordinance, and of such sums as the Legislative Council may from time to time vote for the purpose.

Coffee levy fund.

The provisions

Ord 15/1934

(2) The coffee levy fund shall be in the custody of the Treasurer, 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 Treasurer.

(3) The Board shall apply such moneys as follows :—

- (a) In payment of the expenses, commission, and other charges incurred by the Board or for which the Board may become liable in the course of its business.
- (b) To the cost of advertising the merits of Kenya coffee and increasing its sale by efforts to extend existing markets and exploiting new markets, and any matters incidental thereto.
- (c) To the remuneration of and the payment of travelling and out-of-pocket expenses to individual members of the Board at rates to be approved by the Governor.
- (d) To the employment of such staff as the Board may think fit for the purpose of carrying out its functions.
- (e) With the approval of the Governor in Council, to any other service which in the opinion of the Board is calculated to promote the welfare of the coffee industry or the more economic production or preparation of coffee.

Audit and
publication of
accounts.

12. The accounts of the coffee levy fund shall be audited in such manner as the Governor may direct, and shall, as soon as may be after the close of each year and after audit as aforesaid, be published in such manner as the Governor may direct.

Annual report.

13. The Board shall prepare annually a report of its operations which shall be submitted to the Conference and be published in such manner as the Governor may direct.

Liability of
member of the
Board.

14. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

Registration of
distinguishing
marks.

15. (1) The Director shall keep a register of the distinguishing marks used by persons or by societies to mark and identify the coffee grown by such persons or by the individual members of such societies when such coffee is offered for sale in or exported from the Colony.

(2) (a) Every person who uses any such mark and every society, the members of which use any such mark, shall submit a copy of the mark to the Director for registration.

(b) If the Director approves of a mark he shall register the same and shall issue to the person or society, as the case may be, a certificate in the form set out in the Schedule to this Ordinance.

(c) The Director may in his discretion, and without assigning any reason, refuse to register a mark, or he may require an applicant to submit an alternative mark for his approval.

(3) On and after the expiration of a period of two months from the date of the coming into operation of this Ordinance no person shall use any such mark unless it has been registered by the Director in accordance with the provisions of this section.

(4) Any person who or any society which—

(a) fails to comply with the provisions of paragraph (a) of sub-section (2) of this section; or

(b) contravenes the provisions of sub-section (3) of this section,

shall be guilty of an offence against this Ordinance.

(5) For the purposes of this section the word "society" means any association of persons registered as a co-operative society under the provisions of the Co-operative Societies (Registration) Ordinance, 1931, or of any law amending or replacing the same. No. 24 of 1931.

16. (1) Any person who is guilty of an offence against this Ordinance or who contravenes or fails to comply with any of the provisions of this Ordinance shall be liable, on conviction before a magistrate of the first or second class, for every such offence, contravention or failure to comply with the provisions of this Ordinance to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment; and if the magistrate thinks fit, to the cancellation of any licence issued under section 4 of this Ordinance. Penalty.

(2) Where any offence against this Ordinance committed by a body corporate is proved to have been committed with the consent or approval 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.

17. A European police officer may arrest, without a warrant, any person committing an offence against this Ordinance. Offences cognizable to police.

18. The Governor in Council may make Rules— Power to make rules.
 (a) prescribing the returns and the form thereof to be made by licensed coffee dealers;
 (b) generally for the better carrying out of the provisions of this Ordinance.

19. The Coffee Industry Ordinance, 1932, as amended by the Coffee Industry (Amendment) Ordinance, 1933, is hereby repealed: Repeal.

Provided that such repeal shall not affect the validity of any coffee dealer's licence or any coffee planter's licence issued under the provisions of the said Ordinance, and any such licence shall remain in force up to the date to which it would have remained in force if the said Ordinance had not been repealed and replaced by this Ordinance.

SCHEDULE.

COLONY AND PROTECTORATE OF KENYA.

Coffee Plantations.

Certificate of Registration of Estate Marks issued under the
Coffee Industry Ordinance, 1934.

Name or No. of Plantation	Situation	Area acres	Name of Owner	Marks used for sale or Export

Dated at this day of, 19...

.....
Director of Agriculture.

ORDINANCE No. LV of 1934

Assented to in His Majesty's name this thirty-first day of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

An Ordinance to Amend and Define in more precise terms the Definition of the expression "Native".

31st December, 1934

Date of commencement

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

1. This Ordinance may be cited as the Interpretation (Definition of "Native") Ordinance, 1934. Short title.

2. "Native" means any person who is a member of or any one of whose parents is or was a member of an indigenous African tribe or community, in which term are included the people known as the Swahili, but the term "native" shall not include— Interpretation.
 - (a) an Arab, an Abyssinian (Amhara, Tigre and Shoa), a Somali, a Baluchi born in Africa, a Malagasy or a Comoro Islander; or
 - (b) any person who, of his own motion, proves to the satisfaction of the magistrate of a subordinate court of the first or second class—
 - (i) that he is partly of non-native descent; and
 - (ii) that he is not occupying land in accordance with native tenure or native customary law; and
 - (iii) that he is not living among the members of any African tribe or community in accordance with their customary mode of life.

3. Where for the purposes of any Ordinance or proceedings in any court of law there is any reasonable doubt as to Onus of proof.

whether the person is a native as hereinbefore defined the burden of proving that he is not a native shall be upon such person.

Meaning of non-native.

4. Wherever in this or any other Ordinance the expression "non-native" is used, such expression shall be construed to mean a person other than a native as herein defined.

Repeal.

5. The definition of the word "native" which occurs in each of the Ordinances set out in the First Schedule to this Ordinance is hereby repealed.

Amendment of section 147 of the Penal Code.

6. Notwithstanding anything contained in this Ordinance, the definition of the term "native" contained in section 147 of the Penal Code shall retain the meaning therein expressed.

Substitution of Muslim subordinate courts for Native subordinate courts.

7. Section 2 of the Criminal Procedure Code and sections 3, 6 and 19 of and the Schedule to the Courts Ordinance, 1931, shall be read as if the expression "Muslim subordinate court, in the singular or the plural as the context may require," were substituted for the expression "native subordinate courts" or "subordinate native courts" (as the case may be) wherever either of such last mentioned expressions occurs therein.

Certain provisions applicable to natives to apply to some other race, community, etc.

8. Where in the sections of the Ordinances set out in the first column of the Second Schedule to this Ordinance, the word "native" or "natives" appears each such section shall be construed as if, in addition to the word "native" or "natives" as the case may be, the section contained a reference to the race, tribe or community (in the singular or the plural as the context may require) set out respectively opposite each such Ordinance in the second column of the said Schedule.

Power to make Rules.

9. The Supreme Court may make Rules prescribing the procedure to be followed and the fees to be paid in respect of an application under paragraph (b) of section 2 of this Ordinance.

FIRST SCHEDULE.

Chapter

- 1 ... The Interpretation and General Clauses Ordinance.
 63 ... The Vagrancy Ordinance.
 127 ... The Native Registration Ordinance.
 129 ... The Native Authority Ordinance.
 131 ... The Natives' Trust Fund Ordinance.
 135 ... The Native Foodstuffs Ordinance.
 137 ... The Natives' Arms Ordinance.
 139 ... The Employment of Natives Ordinance.
 159 ... The Branding of Stock Ordinance.
 161 ... The Game Ordinance.

Ordinance No.

- 10/24 ... The Trespass Ordinance, 1924.
 5/25 ... The Resident Native Labourers' Ordinance,
 1925.
 19/28 ... The Local Government (Municipalities) Ordinance,
 1928.
 11/30 ... The Criminal Procedure Code.
 37/30 ... The Prisons Ordinance, 1930.
 39/30 ... The Native Tribunals Ordinance, 1930.
 63/30 ... The Townships Ordinance, 1930.
 16/31 ... The Courts Ordinance, 1931.
 41/33 ... The Licensing Ordinance, 1933.

SECOND SCHEDULE.

FIRST COLUMN	SECOND COLUMN
Sections 10 and 11 of the Vagrancy Ordinance (Chapter 63 of the Revised Edition).	A Somali.
Sections 3, 4, 5, 6, 8, 9, 10, 11, 13, 15, 22 and 23 of the Native Registration Ordinance (Chapter 127 of the Revised Edition).	A Somali.
Sections 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, 24, 25, 26 and 27 of the Native Authority Ordinance (Chapter 129 of the Revised Edition).	A Somali.
Sections 6 and 7 of the Natives' Trust Fund Ordinance (Chapter 131 of the Revised Edition).	A Somali.
Sections 2 and 3 of the Native Foodstuffs Ordinance (Chapter 135 of the Revised Edition).	A Somali.
Sections 3 and 5 of the Natives' Arms Ordinance (Chapter 137 of the Revised Edition).	A Somali.
Sections 2, 16, 17, 18, 33, 38, 39, 63(5), 66, 69, 72, 73, 74, 75 and 76 of the Employment of Natives Ordinance (Chapter 139 of the Revised Edition).	A Somali.
Sections 22 and 33 of the Branding of Stock Ordinance (Chapter 159 of the Revised Edition).	A Somali.
Sections 2, 17 and 34 of the Game Ordinance (Chapter 161 of the Revised Edition).	A Somali.
Section 6 of the Trespass Ordinance No. 10 of 1924.	A Somali.
Sections 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of and the Schedule to the Resident Native Labourers' Ordinance No. 5 of 1925.	A Somali.
Sections 50, 51, 52 and 69 of the Local Government (Municipalities) Ordinance No. 19 of 1928.	A Somali and Comoro Islander and a Malagasy.
Sections 10, 11, 124 and 248 of the Criminal Procedure Code No. 11 of 1930.	A Somali and a Baluchi.
Section 9 of the Criminal Procedure Code, No. 11 of 1930.	An Arab, a Somali, a Baluchi, a Comoro Islander and a Malagasy.
Sections 28 and 61 of the Prisons Ordinance No. 37 of 1930.	A Somali.
Sections 32 and 33 of the Townships Ordinance No. 63 of 1930.	A Somali.
Section 6 of the Courts Ordinance No. 16 of 1931.	An Arab, a Somali and a Baluchi.
Sections 18 and 19 of the Courts Ordinance No. 16 of 1931.	An Arab, a Somali, a Baluchi, a Comoro Islander and a Malagasy.

ORDINANCE No. LVI of 1934

Assented to in His Majesty's name this twenty-fourth day of December, 1934.

J. BYRNE,

Governor.

[24TH DECEMBER, 1934.] Date of assent.

An Ordinance to Amend the King's African Rifles Ordinance, 1932.

24th December, 1934

Date of commencement

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

1. This Ordinance may be cited as the King's African Rifles (Amendment No. 2) Ordinance, 1934, and shall be read as one with the King's African Rifles Ordinance, 1932, hereinafter referred to as the Principal Ordinance.

Short title.
No. 48 of 1932.

2. Section 54 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Repeal and replacement of section 54 of the Principal Ordinance.

“54. (1) No pay shall accrue or become due to any soldier or follower in respect of any day during which he is absent on desertion or without leave or undergoing any sentence of imprisonment, or field punishment, or is under detention awaiting any trial by a civil court or court martial which results in his conviction for any offence or is on a charge of absence without leave for which he is afterwards awarded imprisonment, or field punishment by competent authority.

Pay not to accrue during absence without leave or imprisonment.

(2) Any such period of absence or imprisonment or field punishment or detention lasting six hours or upwards, whether wholly in one day or partly in one day and partly in another, may be deemed for the purposes of this section to constitute a day of absence or a day of imprisonment or detention :

Provided that where the soldier has been thereby prevented from fulfilling any military duty which was consequently thrown upon some other person, any such period of absence or imprisonment or field punishment or detention may for the purposes of this section be deemed to constitute a day, notwithstanding that the duration thereof was less than six hours.”

ORDINANCE No. LVII of 1934

Assented to in His Majesty's name this twenty-fourth day of December, 1934.

J. BYRNE,
Governor.

Date of assent.

[24TH DECEMBER, 1934.]

An Ordinance to Amend the King's African Rifles Reserve of Officers Ordinance, 1927.

Date of commencement

24th December, 1934

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

Short title.

No. 12 of 1927.

1. This Ordinance may be cited as the King's African Rifles Reserve of Officers (Amendment) Ordinance, 1934, and shall be read as one with the King's African Rifles Reserve of Officers Ordinance, 1927, hereinafter referred to as the Principal Ordinance.

Repeal and replacement of section 11 (1) of the Principal Ordinance.

2. Sub-section (1) of section 11 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor :—

“(1) Officers when called up for service or training by the Governor shall during the period of such service or training be entitled to the following rates of pay :—

- | | |
|--|---|
| (a) All officers who are Government officials (irrespective of their military rank in the Reserve) | Sh. 10 per day. |
| (b) Officers who have served with the Regular Army or the Indian Army | The King's African Rifles rate of pay for an officer of their rank. |
| (c) All other officers who are not within the provisions of (a) or (b) | Subalterns £25 per month, Captains £40 per month.” |

ORDINANCE No. LVIII of 1934

Assented to in His Majesty's name this twenty-fourth day of December, 1934.

J. BYRNE,
Governor.

[24TH DECEMBER, 1934.] Date of assent.

An Ordinance to Amend the Post Office Ordinance, 1934.

24th December, 1934

Date of commencement

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

- | | |
|---|--|
| <p>1. This Ordinance may be cited as the Post Office (Amendment) Ordinance, 1934, and shall be read as one with the Post Office Ordinance, 1934, hereinafter referred to as the Principal Ordinance.</p> | <p>Short title.
No. 18 of 1934.</p> |
| <p>2. Section 10 of the Principal Ordinance is hereby amended by the insertion of the words "and other charges" after the word "postage" which occurs in the second line thereof.</p> | <p>Amendment of section 10 of the Principal Ordinance.</p> |
| <p>3. Section 14 of the Principal Ordinance is hereby amended by the deletion of the word "ten" which appears in the seventh line thereof and the substitution therefor of the word "five".</p> | <p>Amendment of section 14 of the Principal Ordinance.</p> |
| <p>4. Section 20 of the Principal Ordinance is hereby amended by the deletion of the words "shall be payable" which occur in the second line thereof and the substitution therefor of the words "may be paid".</p> | <p>Amendment of section 20 of the Principal Ordinance.</p> |
| <p>5. Section 24 of the Principal Ordinance is hereby amended by the deletion of the figures "21 (d)" which occur in the third line thereof, and the substitution therefor of the figures "21 (1) (d)".</p> | |
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ORDINANCE No. LIX of 1934

Assented to in His Majesty's name this twenty-fourth day of December, 1934.

J. BYRNE,
Governor.

Date of assent. [24TH DECEMBER, 1934.]

An Ordinance to Amend the Stamp Ordinance.

Date of commencement *24th December, 1934*

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

Short title. **1.** This Ordinance may be cited as the Stamp (Amendment) Ordinance, 1934, and shall be read as one with the Stamp Ordinance (Chapter 57 of the Revised Edition) hereinafter referred to as the Principal Ordinance.

Cap. 57.

Amendment of section 2 of the Principal Ordinance. **2.** Section 2 of the Principal Ordinance is hereby amended by the insertion after paragraph (11) thereof of the following paragraph to be numbered (11A).

No. 24 of 1930.

“(11A). ‘Gift’ means a transfer of movable or immovable property made voluntarily and without valuable consideration, but does not include an instrument under the Chattels Transfer Ordinance, 1930, nor a transfer under Article 59 of the Schedule to this Ordinance. Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this definition be deemed to be a gift, and (except where marriage is the consideration), the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration when the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred: Provided that the term ‘gift’ shall not include a transfer of movable or immovable property made voluntarily and without valuable consideration to a charitable institution recognized by the Commissioners.”

3. Article 59 of the Schedule to the Principal Ordinance as repealed and replaced by the Stamp (Amendment) Ordinance, 1927, is hereby amended by the deletion of paragraphs (a) and (b) thereof and the substitution therefor of the following :—

Amendment of Article 59 of Schedule to the Principal Ordinance. No. 13 of 1927.

<i>Description of Instrument</i>	<i>Proper stamp-duty</i>
<p>59. Transfer—</p> <p>(a) of shares in an incorporated company or other body corporate, or</p> <p>(b) of debentures, being marketable securities, whether the debenture is liable to duty or not</p> <p>(i) without consideration ...</p> <p>(ii) in any other case ...</p>	<p>Ten shillings.</p> <p>Quarter the duty on a conveyance (No. 22) on the amount or value of the consideration.</p>
<p>Transfer (whether with or without consideration):—</p>	

ORDINANCE No. LX of 1934

Assented to in His Majesty's name this thirty-first day
of December, 1934.

J. BYRNE,
Governor.

Date of assent.

[31ST DECEMBER, 1934.]

**An Ordinance to Apply a Sum of Money for the
Service of the Year ending the 31st day of
December, 1935.**

Date of
commencement

31st December, 1934

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

Short title.

1. This Ordinance may be cited as the 1935 Appropria-
tion Ordinance, 1934.

Public
Revenue.

2. The Public Revenue for the year 1935, and other
funds of the Colony and Protectorate of Kenya are hereby
charged towards the service of the year ending the thirty-first
day of December, one thousand nine hundred and thirty-five,
with the sum of three millions, two hundred and thirty-seven
thousand, five hundred and twenty-nine pounds.

Application
of money
granted.

3. The money granted by this Ordinance shall be applied
for the purposes and services expressed in the Schedule annexed
hereto.

Treasurer's
authority for
payment.

4. The Treasurer 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, the
said sum of three millions, two hundred and thirty-seven
thousand, five hundred and twenty-nine pounds which will
come in course of payment during the year ending on the
thirty-first day of December, one thousand nine hundred and
thirty-five.

SCHEDULE.

				£
I.	His Excellency the Governor	...	...	14,869
II.	Administration	...	...	222,898
IIa.	Administration Extraordinary	...	...	850
III.	Agriculture	...	...	125,871
IIIa.	Agriculture Extraordinary	...	...	628
IV.	Audit	...	...	19,978
V.	Coast Agency	...	...	5,231
VI.	Conference of East African Governors	...	...	955
VII.	Customs	...	...	48,603
VIII.	Education	...	...	177,855
VIIIa.	Education Extraordinary	...	...	100
IX.	Forest	...	...	31,448
X.	Game	...	...	8,596
XI.	Government Analyst	...	...	1,659
XII.	Interest and Unfunded Debt	...	...	4,224
XIII.	Judicial	...	...	30,960
XIV.	Legal	...	...	8,278
XV.	Local Government, Lands and Settlement	...	...	34,288
XVI.	Local Government Contributions to Local Authorities	...	...	83,171
XVII.	Medical	...	...	199,817
XVIIa.	Medical Extraordinary	...	...	750
XVIII.	Military	...	...	129,522
XIX.	Mining and Geological	...	...	11,600
XX.	Miscellaneous Services	...	...	66,445
XXa.	Miscellaneous Services Extraordinary	...	...	1,092
XXI.	Pensions and Gratuities	...	...	209,150
XXII.	Police	...	...	134,773
XXIIa.	Police Extraordinary	...	...	78
XXIII.	Post Office and Telegraphs	...	...	226,693
XXIIIa.	Post Office and Telegraphs Extraordinary	...	...	4,250
XXIV.	Printing and Stationery	...	...	28,311
XXV.	Prisons	...	...	54,524
XXVa.	Prisons Extraordinary	...	...	1,754
XXVI.	Public Debt Funded	...	...	1,043,252
XXVII.	Public Works Department	...	...	82,671
XXVIII.	Public Works Recurrent	...	...	114,752
XXIX.	Registrar General's Department	...	...	6,155
XXX.	Rent and Interest to H.H. the Sultan of Zanzibar	...	...	16,000
XXXI.	Secretariat, Legislative Council and Native Affairs	...	...	23,447
XXXII.	Statistical Departments	...	...	12,503
XXXIII.	Trade and Information Office	...	...	4,536
XXXIV.	Treasury	...	...	27,968
XXXV.	Public Works Extraordinary	...	...	11,640
XXXVI.	Colonial Development Fund	...	...	5,384
Total Expenditure				£3,237,529

ORDINANCE No. LXI of 1934

Assented to in His Majesty's name this thirty-first day
of December, 1934.

J. BYRNE,
Governor.

Date of assent.

[31ST DECEMBER, 1934.]

**An Ordinance to make Provision for the Levy of a
Non-Native Poll Tax at a Rate Graduated
According to the Taxpayer's Income.**

Date of
commencement

31st December, 1934

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

Short Title.

1. This Ordinance may be cited as the Non-Native Poll
Tax Ordinance, 1934.

Interpretation.

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

“collector” means a person appointed by the Treasurer
to be a collector for any area or areas of the Colony ;

“final date” means the last day upon which the tax can
be paid without a penalty falling to be added thereto and,
subject to the provisions of section 9 of this Ordinance, shall be
the 30th day of June, 1935 ;

“taxable income” means the aggregate amount of the
income of any taxpayer from all the sources specified in section
4 remaining after allowing the appropriate deductions and
exemptions under this Ordinance ;

“taxpayer” means an individual liable to tax under this
Ordinance.

(2) An individual shall be deemed to attain the age of
eighteen on the eighteenth anniversary of his birth.

(3) Subject to the provisions of section 5 of this Ordinance
an individual shall be deemed to be a taxpayer for the purposes
of this Ordinance for the year 1935 if—

(a) he is in the Colony for a period or periods amounting
in all to six months or more during the year 1935 ;

(b) he was during the year 1934 in the Colony for a period
or periods amounting in all to six months or more
and also in the Colony for any period during the year

1935 and leaves the Colony during the year 1935, and subsequently returns to the Colony; or

- (c) he comes to the Colony during the year 1935 intending to stay in the Colony for a period of six months or more.

3. (1) The Treasurer of the Colony shall be charged with the due administration of this Ordinance.

Treasurer to administer Ordinance.

(2) The Treasurer may from time to time give general or special instructions to collectors as to the performance of their duties, and may direct or authorize them to refer to him for decision any questions of doubt or difficulty in connection with their duties.

(3) All or any of the powers and duties conferred or imposed by this Ordinance on a collector may be exercised or performed by the Treasurer.

4. (1) There shall be charged, levied and collected in manner hereinafter mentioned a non-native poll tax (in this Ordinance referred to as "the tax") for the year 1935, assessed on every non-native male or female taxpayer at the rate applicable to his or her taxable income accruing in, derived from or received in the Colony in respect of—

Levy of poll tax.

- (a) gains or profits from any trade, adventure in the nature of trade, business, profession, vocation or employment;
- (b) dividends, interests or discounts;
- (c) any pension, allowance, charge or annuity;
- (d) rents, royalties, premiums and any other profit arising from property.

(2) For the purposes of sub-section (1) of this section the words "taxable income accruing in the Colony" shall be deemed to include taxable income received by a taxpayer for services rendered or work performed in the Colony, whether such income is received in the Colony or not.

5. There shall be exempted from the payment of the tax under this Ordinance—

Exemptions.

- (a) every person who has not attained the age of eighteen;
- (b) every female whose taxable income does not exceed £120 per annum;

Tax to be levied on income for 1934.

6. For the year 1935 the tax shall be charged and levied upon and collected from the taxpayer by reference to his taxable income for the year 1934 ascertained in accordance with the rules contained in the Second Schedule to this Ordinance.

Special periods of assessment.

7. Where a collector is satisfied that any person has made up the accounts of his trade or business for the year 1934 on some day other than the 31st day of December, 1934, he may permit the gains or profits of that trade or business to be computed for the purposes of this Ordinance upon the income of the year terminating on that day in the year 1934 on which the accounts of the said trade or business have been made up :

Provided that where, under the provisions of section 7 of the Non-Native Poll Tax Ordinance, 1933, such permission had been given to any person in respect of payment of the tax last payable under that Ordinance, tax shall be charged levied and collected for the year 1935 upon the gains and profits for the full year terminating on the like date in the year 1934, subject to any such adjustments as, in the opinion of the collector, may be just and reasonable.

Rates of tax.

8. The tax shall be charged at the following rates:—

						<i>Sh.</i>
Where the taxable income does not exceed £100 ...	...	...	...	...	...	30
Where the taxable income exceeds—						
£100 but does not exceed £200	...	...	...	...	...	40
£200 " " £300	...	...	...	...	...	60
£300 " " £400	...	...	...	...	...	80
£400 " " £500	...	...	...	...	...	100
£500 " " £600	...	...	...	...	...	140
£600 " " £700	...	...	...	...	...	180
£700 " " £800	...	...	...	...	...	220
£800 " " £900	...	...	...	...	...	260
£900 " " £1,000	...	...	...	...	...	300
£1,000 " " £1,100	...	...	...	...	...	340
£1,100 " " £1,200	...	...	...	...	...	380
£1,200 " " £1,300	...	...	...	...	...	420
£1,300 " " £1,400	...	...	...	...	...	460
£1,400 " " £1,500	...	...	...	...	...	500
£1,500 " " £2,000	...	...	...	...	...	1,000
£2,000 " " £2,500	...	...	...	...	...	1,500
£2,500 " " £3,000	...	...	...	...	...	2,000
£3,000 " " £3,500	...	...	...	...	...	2,500
£3,500 " " £4,000	...	...	...	...	...	3,000
£4,000 " " £5,000	...	...	...	...	...	4,000
£5,000 " " £6,000	...	...	...	...	...	5,000
£6,000 " " £7,000	...	...	...	...	...	6,000
£7,000 " " £8,000	...	...	...	...	...	7,000
£8,000 " " £9,000	...	...	...	...	...	8,000
£9,000 " " £10,000	...	...	...	...	...	9,000
£10,000 ... ..	...	...	...	...	...	10,000

9. (1) Any taxpayer who—

- (a) comes to the Colony after the thirty-first day of March, 1935; or
- (b) attains the age of eighteen years on or after the thirty-first day of March, 1935,

Tax of persons coming to or returning to Colony and of persons attaining the age of eighteen.

and has not already made a return under section 10 of this Ordinance and paid tax in accordance therewith in respect of the year 1935 shall make a return of his taxable income and pay the tax for the year 1935 in accordance with such return within ninety days after his so coming to or returning to the Colony or after his so attaining the age of eighteen.

(2) Any taxpayer who leaves the Colony between the thirty-first day of December, 1934, and the first day of April, 1935, and who subsequently returns to the Colony and who, prior to his departure, had not made a return under section 10 of this Ordinance and paid the tax in accordance therewith for the year 1935 shall make a return of his taxable income and pay the tax for the year 1935 in accordance with such return within ninety days after the date of his return to the Colony.

(3) Any taxpayer who leaves the Colony after the thirty-first day of March, 1935, and before the thirtieth day of June, 1935, and who subsequently returns to the Colony and who, prior to his departure, had not already made a return under section 10 of this Ordinance and paid the tax in accordance therewith shall make a return of his taxable income and pay the tax for the year 1935 in accordance with such return within the same number of days after the date of his return to the Colony as the number of days which elapsed between the date of his departure from the Colony and the thirtieth day of June, 1935.

10. On or before the final date every taxpayer shall submit to the collector a return of income in the form set out in the First Schedule to this Ordinance, and shall at the same time pay to a collector the tax due in accordance with such return.

Submission of return of income.

11. All returns and payments of tax shall be made to a collector of the area in which the taxpayer resides or carries on business.

Tax to be paid to collector of area.

12. Where a collector is satisfied that any taxpayer owing to his insufficient knowledge of the English language or by reason of physical disability is unable to make a return of

Verbal returns.

taxable income in writing he may permit such taxpayer to make a verbal return of taxable income and to pay the tax due thereon, but every such verbal return shall be recorded in writing and authenticated by the thumb print of the taxpayer or by other satisfactory means of identification. Such record shall for all the purposes of this Ordinance be deemed to be a return of taxable income made by the taxpayer.

Powers of collector.

13. When a taxpayer has made a return and paid tax as provided in section 9 or section 10 of this Ordinance the collector shall receive the tax so paid and give a receipt therefor, and may thereafter—

- (a) accept the amount so paid in full satisfaction of the tax; or
- (b) refuse to accept the return, and to the best of his judgment determine the amount of the taxable income of the taxpayer and assess him accordingly.

Collector may determine tax when taxpayer fails to make return.

14. (1) Where a taxpayer has not made a return of taxable income by the final date a collector may by notice call upon him to make a return and pay the tax within a time to be specified in such notice.

(2) If, on the expiry of the period specified in such notice, the taxpayer has not made a return and paid tax in accordance therewith, the collector may, according to the best of his judgment, determine the amount of the taxable income of such taxpayer and assess him accordingly, and thereafter proceed in accordance with the provisions of section 17 of this Ordinance :

Provided that, if a collector is satisfied that the amount of tax due from any such taxpayer does not exceed Sh. 30, he may, without calling upon such taxpayer to make a return and pay the tax as provided in sub-section (1) of this section, assess the tax payable by such taxpayer at Sh. 30 and may without complying with the provisions of section 17 of this Ordinance forthwith proceed to recover the tax and penalty, if any, in accordance with the provisions of section 24 of this Ordinance.

15. Where a taxpayer has made a return of taxable income but has not paid tax according to such return by the final date, a collector may—

- (a) if he is satisfied that the return of taxable income is correct, without giving any further notice to the taxpayer forthwith proceed to recover the tax due

according to such return and penalty, if any, in accordance with the provisions of section 24 of this Ordinance; or

- (b) if he is not satisfied that the return of income is correct, determine according to the best of his judgment the amount of the taxable income of such taxpayer and assess him accordingly, and thereafter proceed in accordance with the provisions of section 17 of this Ordinance.

16. For the purpose of obtaining full information in respect of an individual's income a collector may give notice to such individual requiring him within the time limited by such notice, which time shall not be less than twenty-one days from the date of such notice, to complete and deliver to the collector a prescribed return and/or to attend personally before him and to produce for examination any books, documents, accounts and returns which the collector may deem necessary.

Power to call for returns, books, etc.

17. Save as provided in paragraph (a) of section 15 and in the proviso to section 14 of this Ordinance, where a collector has according to the best of his judgment determined the amount of the taxable income of a taxpayer and has assessed him accordingly notice of the amount of tax so assessed shall be served upon the taxpayer, and the amount of such tax together with any penalty due thereon in accordance with section 18 of this Ordinance shall be due and payable within one month of the date of service of such notice.

Tax to be paid within one month of the date of service of notice of amount of tax.

18. There shall be added to the tax due in respect of each year a penalty equal to twenty per centum of the amount of such tax in the following cases—

Penalty added when return not made or tax not paid.

- (i) if a return of taxable income is not made and tax in accordance therewith is not paid by the final date;
- (ii) if a return of taxable income is made but tax in accordance therewith is not paid by the final date;
- (iii) if tax or additional tax is declared to be due from a taxpayer upon an assessment under sections 13 and 14 or 17 hereof.

The penalties referred to in this section shall be deemed to be part of the tax due and shall be recoverable accordingly.

19. The Governor may remit the whole or any part of any penalty under section 18 for any reason which to him may seem fit.

Power to remit penalty.

Obligations of employers.

20. (1) Every employer when required to do so by notice from a collector shall, within the time limited by the notice, prepare and deliver for any year a return containing—

(a) the names and places of residence of all non-native persons employed by him ; and

(b) the payments and allowances made to those non-native persons in respect of that employment,

and the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from a collector shall apply to any such return.

(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.

Return of inmates and lodgers.

21. A collector may give notice in writing to any person requiring him within the time limited by such notice to furnish a return containing the name of every inmate or lodger 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.

Objections to assessment and appeals to Supreme Court.

22. (1) Any individual who is dissatisfied with the amount at which he is assessed, or claims that he is not liable to tax, may within seven days of being notified of such assessment give notice in writing to the collector who made the assessment specifying his objections and if such objections be disallowed such person may appeal to the Supreme Court.

(2) The appeal shall be presented within twenty-one days from the date of notification of such disallowance.

(3) No appeal under this section shall be entertained unless the tax due and payable according to the assessment and any penalty added thereto are deposited with the collector :

Provided that where the Supreme Court is satisfied that it is inequitable to call upon the appellant to make such deposit the Supreme Court may absolve the appellant from the requirement of this sub-section, or may call upon him to deposit with the collector such sum as to the Court may appear reasonable.

(4) The Supreme Court may on appeal confirm, amend or cancel any assessment and order a refund of tax paid or an additional payment of tax to such extent as the circumstances require. The Supreme Court shall send a copy of its decision to the collector and to the appellant.

(5) The proceedings of the Supreme Court shall be heard *in camera* if so required by the appellant.

(6) The costs of the appeal shall be in the discretion of the Supreme Court.

(7) The Supreme Court may make rules governing such appeals and providing for the method of tendering evidence and prescribing the procedure to be followed. Rules govern-
ing appeals.

23. (1) In any appeal under this Ordinance the onus of proving that the assessment complained of is excessive shall be on the appellant. Onus of proof
on appellant.

(2) As from the date of the receipt of the notice of objection mentioned in sub-section (1) of section 22 of this Ordinance until the date on which the objector receives notice of the decision of the collector or the final determination of his appeal (if any) by the Supreme Court time shall not be deemed to run against such objector as regards liability to penalty under section 18 of this Ordinance.

24. (1) Tax due shall be deemed to be a debt due to Government and may be sued for and recovered according to law at the suit of the Treasurer or of a collector with full costs of suit. Tax deemed
to be a
debt due to
Government.

(2) A certificate under the hand of the Treasurer or a collector stating the amount of tax with which the defendant has been assessed shall be evidence that such amount is due and payable by such defendant.

(3) In any action or proceeding for the recovery of any tax it shall not be competent for the defendant to question the correctness of any assessment :

Provided that—

(a) notice of assessment specifying the tax payable has been served upon the defendant ; and

(b) the period allowed to the defendant within which to appeal from such assessment has elapsed :

Provided further that the provisions of paragraphs (a) and (b) of the proviso to sub-section (3) of this section shall not apply to any action or proceeding instituted for the recovery

of any tax under the provisions of the proviso to section 14 of this Ordinance, or under the provisions of paragraph (a) of section 15 of this Ordinance.

Collector may require production of receipt for tax.

25. (1) A collector may, at any time, require any person to produce the receipt granted to such person for the payment of tax under this Ordinance and a collector may retain any receipt produced for such time as he may consider necessary for the purpose of identifying the person named therein with the person producing the same.

If receipt not produced information required to be furnished to collector.

(2) A collector may require any person who refuses or neglects to produce his receipt when requested so to do to furnish him with information as to the office at which he has paid the tax in respect of which the request is made, and with such further information as the collector may require for the purpose of ascertaining whether such person has paid such tax.

Penalty for refusing to produce receipt or to give information.

(3) Any person who, without lawful excuse, neglects or refuses to produce such receipt when required as aforesaid, or who, having failed or refused to produce his receipt, fails to furnish the information which may be required of him under the preceding sub-section, shall, on conviction, be liable to a fine not exceeding seven pounds ten shillings or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.

Non-production of receipt to be *prima facie* evidence of non-payment of a tax.

(4) Evidence of the non-production of a receipt for the payment of tax upon requisition being made as aforesaid shall, in and for the purposes of any proceedings for the recovery of tax, be *prima facie* evidence that the tax in respect of which the receipt has not been produced has not been paid.

Penalty for producing receipt granted to some other person or for giving false information.

(5) Any person who, on being required by a collector to produce his receipt, produces a receipt granted to some other person, or who, having failed or refused to produce his receipt, furnishes a collector with any false particulars in connection with the information which may be required of him under sub-section (2) of this section, shall, on conviction, be liable to a fine not exceeding forty-five pounds or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

Power to remit tax.

26. The Treasurer or a person authorized by him in that behalf may remit the tax wholly or in part on the ground of the poverty of the person liable to pay the same or on any other ground approved by the Governor, and the Treasurer may also for like reasons refund the tax paid or any part thereof.

27. If it be proved to the satisfaction of the Treasurer that any person has paid tax in excess of the amount with which he is properly taxable such person shall be entitled to have the amount so paid in excess refunded. Refund of
excess
payment
of tax.

28. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information, returns, assessment lists or copies thereof relating to the income or items of income of any taxpayer as secret and confidential. Official
secrecy.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies thereof relating to the income of any taxpayer 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 to communicate it; or

(b) otherwise than for the purpose of this Ordinance,

shall be guilty of an offence.

29. (1) (a) Any notice under this Ordinance may be served on a taxpayer personally or by being sent through registered post or by being left at the usual place or last known place of abode or business of such taxpayer. Service and
delivery of
notices.

(b) In the event of a notice being served through the post the notice 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 service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

(2) Any notice under this Ordinance required to be submitted to or served on the Treasurer or a collector may be sent through registered post or left at the Treasury, Nairobi, where the Treasurer is the addressee, or at the office of a collector where a collector is the addressee.

30. All returns, additional information and resulting correspondence relating to any matter under this Ordinance shall, if marked with the words "Non-Native Poll Tax" and when addressed to the Treasurer or a collector, be transmitted by the Postal Department free of postage. Free postage.

Rules.

31. The Governor in Council may make rules generally for carrying out the provisions of this Ordinance and, in particular, for all or any of the following purposes, that is to say :—

- (a) Prescribing the duties of all persons engaged or employed in the administration of this Ordinance.
- (b) Prescribing any deductions which may be allowed in the ascertainment of taxable incomes.
- (c) Prescribing the forms of returns, claims, statements and notices under this Ordinance and by whom the same shall be made and the time and the mode of making and furnishing the same.
- (d) Providing for the deduction of tax from the salary of any person in the public service or the service of the Railways and Harbours Administration in such instalments as shall ensure the payment of tax by the final date.
- (e) Prescribing any such matters as are authorized by this Ordinance to be prescribed.

Penalties for offences.

32. Any person guilty of an offence against this Ordinance for which no other penalty is specifically provided shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for any term not exceeding three months.

Penalty for failure to comply with notice, etc.

33. Every person who—

- (a) fails to comply with the requirements of a notice given to him under this Ordinance; or
- (b) without sufficient cause fails to attend in answer to a notice issued to him under this Ordinance or having attended fails to answer any questions lawfully put to him;

shall be guilty of an offence and shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for any term not exceeding three months.

Penalty for making incorrect returns, etc.

34. (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 liability to tax;

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 the total of 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 and in default of payment to imprisonment for any term not exceeding six months.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence is made in the year 1935 or within three years after the expiration thereof.

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

35. (1) Any person who wilfully with intent to evade or to assist any other person to evade payment of the 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 the total of two hundred

pounds and treble the amount of tax for which he is liable under this Ordinance, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

(2) The Treasurer may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

Tax to be payable notwithstanding proceedings for penalties, etc.

36. 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.

Prosecution to be with the sanction of the Treasurer.

37. No prosecution in respect of an offence under section 33, section 34 or section 35 of this Ordinance may be commenced except at the instance of or with the sanction of the Treasurer.

Savings for criminal proceedings.

38. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law.

Duration of Ordinance.

39. (1) This Ordinance shall continue in force until the thirty-first day of December, 1935, and shall then expire :

Provided that such expiry shall not affect any liability, penalty or punishment incurred under this Ordinance or any legal proceeding or remedy in respect of any such liability, penalty or punishment, but any such legal proceeding or remedy may be carried on or sought as if this Ordinance had not expired.

Repeal. Cap. 52.

(2) The Non-Native Poll Tax Ordinance is hereby repealed, but, on the expiry of this Ordinance, the provisions of the said Non-Native Poll Tax Ordinance shall revive and be of full force and effect.

FIRST SCHEDULE.

Station.....

I, (name)
of (address)
(trade, profession or occupation)
state that my taxable income calculated in accordance with the

1934

Non-Native Poll Tax

No. LXI

provisions of the Non-Native Poll Tax Ordinance, 1934, did not exceed £..... for the year ending 31st December, 193..... and I tender Sh., being the amount of tax payable by me.

.....
Signature.

Date.....

SECOND SCHEDULE.

RULES FOR ASCERTAINING TAXABLE INCOME.

1. All outgoings and expenses wholly and exclusively incurred in the production of the income may be deducted, including—

- (a) sums paid by way of interest upon any money borrowed where the collector 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) any sum expended for repair of premises, plant and machinery employed in acquiring the income or for the renewal, repair or alteration of any implement, utensil or article so employed;
- (d) such other deductions as may be prescribed by any rule made under this Ordinance;
- (e) actual bad debts.

2. In ascertaining the taxable income of any person who shall have been subject to a levy on salary imposed under the Levy on Official Salaries Ordinance, 1931, or the Levy on Salaries (Transport-Services) Ordinance, 1931, the amount of salary shall be deemed to be the amount of the salary as reduced by such levy.

Nos. 57 and 58
of 1931.

3. In ascertaining the taxable income of any public officer or other employee of the Government or of the Railways and Harbours Administration no account shall be taken of any amount which such officer or employee receives as an allowance in lieu of free quarters.

4. A deduction shall be allowed in respect of—

- (a) the official emoluments of the Governor;
- (b) the official emoluments of members of the permanent consular services of foreign countries;
- (c) the official emoluments of persons in the permanent service of the Imperial Government or a Dominion Government;
- (d) pensions granted in respect of wounds and disability caused in war.

5. No deduction in ascertaining the taxable income shall be allowed in respect of—

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively paid or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) reserves for bad debts;
- (h) salary drawn as leave pay during absence from the Colony.

No. LXII of 1934

Assented to in His Majesty's name this thirty-first day of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

An Ordinance to Provide for the Control of the Sale of Liquor.

1st January, 1935

Date of commencement

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

1. This Ordinance may be cited as the Liquor Ordinance, 1934, and shall come into operation on the 1st day of January, 1935. Short title.

2. The provisions of this Ordinance shall not apply:— Exemptions.

(1) Save as may be prescribed by Rules made under paragraph (c) of section 65, to any medical practitioner, apothecary, chemist or druggist who may administer or sell for purely medical purposes any bona fide medicine containing intoxicating liquor as hereinafter defined.

(2) To any person selling any spirituous or distilled perfume, or perfumery:

Provided that no person shall sell to a native, a Swahili, a Somali, a Baluchi born in Africa, a Malagasy, or a Comoro Islander, any perfume, scent or essence containing more than 10 per centum of alcohol except by virtue of a special permit which may be granted for each occasion by a district commissioner.

(3) To any person, who is not licensed for the sale of intoxicating liquor for consumption on the premises, selling methylated spirits to persons other than natives, Swahilis, Somalis, Baluchis born in Africa, Malagasies, or Comoro Islanders.

(4) To any auctioneer selling by auction liquor in quantities not less than such as are authorized to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer.

- (5) To the sale to persons, other than natives, Swahilis, Somalis, Baluchis born in Africa, Malagasies, or Comoro Islanders, by a deceased person's legal personal representative of any liquor forming part of the estate of such deceased person.
- (6) To any person acting under the authority of any court, or to any officer of customs in the exercise or discharge of his duties.

Interpretation

3. In this Ordinance unless inconsistent with the context—

“habitual drunkard” means any person convicted under this Ordinance, or under any other law, of being drunk and disorderly or drunk and incapable who has been so convicted on three other occasions within twelve months immediately preceding such conviction. Such person shall, however, cease to be a habitual drunkard if at any time thereafter he shall not again be so convicted for a period of twelve consecutive months;

“intoxicating liquor” or “liquor” means any spirit, wine, ale, beer, porter, cider, perry, hop beer, and any liquor of a strength exceeding 3 per centum of proof spirit, and any other liquor which the Governor may, from time to time, declare by proclamation to be included in this definition, but does not include native intoxicating liquor as defined in the Native Liquor Ordinance, 1930;

No. 36 of 1930.

“intoxicating medicine” means any patent or proprietary medicine which the Governor may, by proclamation, declare to be an intoxicating medicine;

“licence” means any licence for the sale or manufacture of liquor granted under this Ordinance;

“licensing area” means a district or a group of districts which the Governor may, by notice in the Gazette, declare to be a licensing area for the purposes of this Ordinance;

“meal” means a luncheon, dinner or supper actually supplied for which a price of not less than one shilling per head is actually paid or bona fide to be paid;

“methylated spirits” means spirits with which any substance is mixed so as to render the mixture unfit for human consumption as a beverage;

“new licence” means a licence applied for in respect of premises not licensed for the sale of intoxicating liquor at the date of application therefor;

“spirituous liquor” means liquor manufactured by any process of distillation.

4. (1) No person shall sell any intoxicating liquor or manufacture any malt liquor in the Colony without a licence.

The sale or manufacture of liquor without a licence prohibited.

(2) No person licensed under this Ordinance for the sale of intoxicating liquor for consumption on the premises shall sell or keep or permit to be sold or kept on the licensed premises methylated or other denatured spirits.

Licence does not authorize sale of methylated spirits.

5. (1) Save as otherwise provided by the Industrial Alcohol Ordinance it shall not be lawful for any person within the Colony to distil wine or spirituous liquors from any article.

Prohibition of distilling. Cap. 102.

(2) Any person contravening the provisions of this section shall on conviction be liable to the penalties provided in section 38 of this Ordinance, and all the liquor and all the machinery used for such distilling or manufacture found on his premises may be forfeited.

6. The provisions of section 5 of this Ordinance shall not apply to the owner or occupier of land distilling wine or spirituous liquor from the grapes or fruits grown on such land for his own use.

Exemption from prohibition of distilling.

LICENCES.

7. The licences to be granted under this Ordinance shall be issued by the district commissioners in the several districts of this Colony who shall, in regard to the issue of such licences and to any privilege allowed or granted to the holders thereof to be noted or endorsed upon any licence, conform to the provisions of this Ordinance and to any rules made by the Governor relating to the performance of their duties under this Ordinance.

Issue of licences.

8. For or in respect of licences granted or renewed or transfers or removals or privileges allowed to the holders of licences under and in terms of this Ordinance there shall be paid to the district commissioner the fees set out in the Schedule hereto.

Fees to be paid in respect of licences.

Description of licences. **9.** Licences of the several descriptions following may be granted under this Ordinance :—

- (1) A wholesale liquor licence.
- (2) An hotel liquor licence.
- (3) A restaurant or café liquor licence.
- (4) A malt liquor licence.
- (5) A wine merchant's and grocer's liquor licence.
- (6) A general retail liquor licence.
- (7) A railway station liquor licence.
- (8) A theatre liquor licence.
- (9) A temporary liquor licence.
- (10) A brewer's liquor licence.
- (11) A steamship liquor licence.
- (12) A canteen liquor licence.
- (13) A railway restaurant car liquor licence.
- (14) A camp canteen liquor licence.
- (15) A temporary extension licence.
- (16) A proprietary club liquor licence.
- (17) A members' club liquor licence.

Varieties of licence.

10. In regard to licences granted under this Ordinance the following definitions and provisions shall apply :—

Wholesale licence.

- (1) (a) A Wholesale Liquor Licence shall authorize the holder to sell and deliver liquor of one trade description in quantities of not less than two gallons, if in cask, or in not less than twelve reputed quart bottles or twenty-four reputed pint bottles to be delivered at one time to one person to be consumed elsewhere than on the premises.
- (b) Such licence may be issued to an individual or to a company or partnership when two or more persons carry on a business as a company or partnership in the same premises.

Hotel liquor licence.

- (2) (a) An Hotel Liquor Licence shall authorize the sale—
 - (i) to a lodger on the premises, of liquor for his own consumption on the premises on any day at any hour;
 - (ii) to a lodger on the premises, of liquor for the consumption on the premises by the guests of such lodger between the hours of 10 a.m. and 12 midnight : Provided that the sale of liquor to

such guests shall not be authorized between the hours of 11 p.m. and 12 midnight unless such liquor is required for consumption at a meal to be consumed on the premises.

- (b) No such licence shall be granted unless it is proved to the satisfaction of the licensing court that the premises afford reasonable accommodation for visitors and are provided with proper sanitary arrangements.
- (c) Nothing in this section contained shall prevent the grant or renewal of a general retail liquor licence as well as an hotel liquor licence to the keeper of an hotel.
- (3) A Restaurant or Café Liquor Licence shall, save as herein provided, authorize the sale of liquor by retail on any day between the hours of 10 a.m. and 12 midnight to persons taking meals in the restaurant or café in respect of which such licence has been granted, to be consumed at such meals: Provided that, in the case of Sundays, Good Friday and Christmas Day the following hours shall be the hours during which the sale of such liquor shall be authorized:—

In the Colony of Kenya :

Sundays and Good Fridays ...	12 noon to 2.30 p.m.
	and
	6 p.m. to 9 p.m.
Christmas Day	12 noon to 3 p.m.
	and
	6 p.m. to 11 p.m.

In the Protectorate of Kenya :

Sundays and Good Fridays...	11 a.m. to 1.30 p.m.
	and
	6 p.m. to 9 p.m.
Christmas Day	11 a.m. to 2 p.m.
	and
	6 p.m. to 11 p.m.

- (4) A Malt Liquor Licence shall, save as herein provided, authorize the sale of ale, beer, porter, cider, perry and hop beer to be consumed on the premises specified in the licence on any day between the hours of 10 a.m. and 11 p.m. : Provided that, in the case

Restaurant or
Café liquor
licence.

Malt liquor
licence.

of Sundays, Good Friday and Christmas Day, the following hours shall be the hours during which the sale of such ale, beer, porter, cider, perry and hop beer shall be authorized :—

In the Colony of Kenya :

Sundays and Good Fridays ... 12 noon to 2.30 p.m.
and
6 p.m. to 9 p.m.
Christmas Day 12 noon to 3 p.m.
and
6 p.m. to 11 p.m.

In the Protectorate of Kenya :

Sundays and Good Fridays... 11 a.m. to 1.30 p.m.
and
6 p.m. to 9 p.m.
Christmas Day 11 a.m. to 2 p.m.
and
6 p.m. to 11 p.m.

Wine
Merchant's
and Grocer's
licence.

- (5) Save as is provided in this sub-section a Wine Merchant's and Grocer's Licence shall authorize the sale on the premises therein specified and for consumption elsewhere than on such premises on any day between the hours of 6 a.m. and 9 p.m. of not less than one reputed quarter-pint bottle securely corked and stoppered :

No. 24 of 1925.

Provided that, in any municipality, township or area to which the Shop Hours Ordinance, 1925, has been applied, unless the premises in respect of which such licence has been granted are used solely for the purpose of the sale of intoxicating liquor, such licence shall authorize such sale only between the hours of 6 a.m. and 6 p.m. :

No. 24 of 1925.

Provided further that, notwithstanding the provisions of the Shop Hours Ordinance, 1925, it shall be lawful for the holder of such licence to sell such liquor on Sundays, Good Friday and Christmas Day between the hours of 9 a.m. and 12 noon.

General
Retail liquor
licence.

- (6) A General Retail Liquor Licence shall, save as herein provided, authorize the sale of liquor in any quantities on the premises therein specified on any day between the hours of 10 a.m. and 12 midnight for consumption on or off the premises : Provided that, in the

case of Sundays, Good Friday and Christmas Day, the following hours shall be the hours during which the sale of such liquor shall be authorized :—

In the Colony of Kenya :

Sundays and Good Fridays ...	12 noon to 2.30 p.m.
	and
	6 p.m. to 9 p.m.
Christmas Day	12 noon to 3 p.m.
	and
	6 p.m. to 11 p.m.

In the Protectorate of Kenya :

Sundays and Good Fridays...	11 a.m. to 1.30 p.m.
	and
	6 p.m. to 9 p.m.
Christmas Day	11 a.m. to 2 p.m.
	and
	6 p.m. to 11 p.m.

Provided further that notwithstanding the provisions of this sub-section the sale of liquor between the hours of 11 p.m. and 12 midnight shall not be authorized except for consumption at a meal to be consumed on the premises.

- (7) (a) A Proprietary or Members' Club Liquor Licence shall authorize the sale and supply of liquor in any quantity to the members of the club at any time for consumption on the premises in respect of which it has been issued. ~~Provided that no place of accommodation, entertainment or refreshment shall be considered to be a club where persons other than members or the invited guests of members are allowed entry or accommodation, or where persons other than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.~~ Club liquor licence.
- (b) Every club licence shall be issued to the proprietor, secretary or manager of the club.

No transfer of any such licence shall be necessary upon any change of any such proprietor, secretary or manager, but the person for the time being holding any such office shall be entitled to the privileges granted by the licence and shall be subject to the duties and liabilities imposed upon the holder thereof.

Railway
station liquor
licence.

(8) (a) A Railway Station Liquor Licence shall authorize the sale of liquor by retail at any railway station refreshment room or other railway premises named in such licence to bona fide passengers travelling by train or lawfully using the railway premises for railway purposes.

(b) An applicant for a Railway Station Liquor Licence must produce a written recommendation from the manager of the railway that such licence be granted or renewed to such applicant.

Theatre liquor
licence.

(9) A Theatre Liquor Licence shall authorize the holder thereof to sell (in any building a portion of which is used as a place of entertainment) by retail, on any day at such hours between the hours of 2 p.m. and 12 midnight as the entertainment may continue, to members of the staff of the theatre and to members of the audience at and to the performers in such entertainment, liquor for consumption on the premises in respect of which the licence has been granted.

Temporary
liquor licence.

(10) (a) A Temporary Liquor Licence shall authorize the holder, being also a holder of a general retail liquor licence, to sell liquor by retail at any place of recreation or public amusement or other assembly for the period during which such recreation or amusement continues, subject to such restrictions and conditions as the district commissioner authorizing the issue of the licence may think fit.

(b) No certificate from a licensing court shall be required in respect of the grant of such licence.

(c) The licence shall specify the name of the applicant, the place for which such temporary licence is granted the number of days and the hours during which the sale thereunder is authorized and such restrictions and conditions as the district commissioner may impose: Provided that the number of days mentioned in such licence shall not exceed three.

(d) The officer issuing the licence shall give notice to the police officer in charge of the district in which the place for which such licence has been granted is situate of the grant of any temporary liquor licence and the particulars thereof.

- (11) (a) A Brewer's Liquor Licence shall authorize the holder thereof to manufacture malt liquor and to sell such liquor by wholesale only. Brewer's
liquor licence.
- (b) The provisions of sub-section (1) of this section shall apply *mutatis mutandis* to such licence.
- (12) (a) A Steamship Liquor Licence shall authorize the holder to sell any liquor on board a steamship plying on Lake Victoria or on other inland waters. Steamship
liquor licence.
- (b) A Steamship Licence shall specify the steamship in respect of which it is issued and shall be valid only on that steamship.
- (c) No liquor shall be sold under such licence when the steamship in respect of which it is issued is in port, except to the passengers on such steamship and to the members of the crew of such steamship.
- (13) (a) A Canteen Liquor Licence shall authorize the sale of liquor by retail on any premises set apart as a canteen, club, institute, mess, or other similar institution for the use of members only of His Majesty's Navy, His Majesty's Army, the Royal Air Force, the King's African Rifles or the Kenya Police Force, the Kenya Defence Force and the Kenya Naval Volunteer Reserve. Such licence shall authorize the sale of liquor to members only of the canteen, club, institute, mess or other similar institution for consumption on the licensed premises only. Canteen
liquor licence.
- (b) If a district commissioner is satisfied that the profits derived by any such canteen, club, institute, mess or other similar institution from the sale of liquor are devoted solely to the benefits of the funds of such canteen, club, institute, mess or other similar institution, he may, notwithstanding the provisions of this Ordinance, issue a Canteen Liquor Licence free of charge.
- (c) A district commissioner may, without requiring the certificate of any licensing court, issue a Canteen Liquor Licence or a Camp Canteen Liquor Licence, to such person as the officer commanding the force or regiment in respect of which the licence is required shall nominate.

Railway
Restaurant
Car liquor
licence.

- (14) (a) A Railway Restaurant Car Liquor Licence shall authorize the holder to sell any liquor on a railway restaurant car.
 (b) Such licence shall be necessary in respect of each restaurant car.
 (c) No liquor shall be sold under such licence except to passengers travelling by the train to which such restaurant car is attached.

Camp Canteen
liquor licence.

No. 12 of 1928.

- (15) A Camp Canteen Liquor Licence shall be valid for the duration of a training camp held under the provisions of the Defence Force Ordinance, 1927, or for seven days, whichever period is the shorter, and shall authorize the sale of liquor at the camp for consumption in the camp.

Temporary
Extension
licence.

- (16) (a) A Temporary Extension Licence may be granted by a district commissioner to the holder of a General Retail Liquor Licence or of a Restaurant or Café Liquor Licence and shall authorize the sale of liquor—
 (i) in respect of any day, other than a Sunday or Good Friday, between the hours of 11 o'clock at night and 2 o'clock in the morning on any particular day specified therein;
 (ii) in respect of a Sunday, between the hours of 9 o'clock and 11 o'clock at night.
 (b) No such licence shall be granted in respect of a Good Friday.
 (c) For the purposes of sub-paragraph (i) of paragraph (a) of this sub-section "day" means any period of twenty-four hours ending at 6 o'clock in the morning.

Provision of
sanitary
arrangements
on premises.

- (17) No licence which authorizes the sale of any liquor for consumption on the premises shall be granted by any licensing court, or in the case of a temporary liquor licence by any district commissioner unless it is proved to the satisfaction of such licensing court or of such district commissioner, as the case may be, that the premises are provided with proper sanitary arrangements.

Sale during
11 p.m. to
12 midnight
permission not
compulsory.

- (18) Nothing in this section contained shall be construed to mean that the holder of a Restaurant or Café Liquor Licence, or a General Retail Liquor Licence

shall be compelled to sell liquor between the hours of 11 p.m. and 12 midnight, or, in the case of the holder of an Hotel Liquor Licence, that the holder thereof shall be compelled to sell liquor to a lodger on the premises for the consumption by the guests of such lodger between such hours.

- (19) Notwithstanding the provisions of the Licensing Ordinance, 1933, or of any Ordinance amending or replacing the same, every liquor licence granted under the provisions of this Ordinance shall authorize the holder of such licence to sell, during the hours during which the sale of liquor is authorized under such licence, cigars, cigarettes, tobacco and matches.

Licence to include sale of tobacco.

LICENSING COURTS.

11. (a) The Governor may appoint in and for any licensing area a licensing court for the consideration and determination of applications for or relating to the granting, renewal or transfer of licences for the sale of intoxicating liquor and for the manufacture of malt liquor within such licensing area.

Appointment of licensing courts.

(b) Every licensing court so appointed shall consist of not more than seven and not less than three persons residing in such licensing area :

Provided that, where in any licensing area there is established a Municipal Council or a Municipal Board, one of the members of the licensing court for such area shall be a member of such Municipal Council or Board who shall be appointed by the Governor with the approval of such Municipal Council or Board.

12. (1) The following persons shall be disqualified for appointment, and if appointed shall not continue, as members of a licensing court :—

Disqualification of members of court.

- (a) The holder of any licence for the sale or manufacture of liquor.
- (b) Any person interested or concerned in any partnership or company with any holder of such licence as aforesaid or with any brewer.
- (c) Any paid officer or paid agent of any partnership or society interested in the sale, or the prevention of the sale, of intoxicating liquor.

- (d) Any person employed directly or indirectly as an agent for the purpose of making application for a licence for any other person, or any partner of any person so employed as an agent.
- (e) Any person being the agent or manager of, or a partner in, any trade or calling carried on upon any premises licensed or in respect of which an application for a licence has been made, or the owner or lessor of or the holder of any mortgage in respect of such premises.
- (f) An undischarged bankrupt.
- (g) Any person who, in the Colony or elsewhere, has had a sentence of imprisonment without the option of a fine imposed upon him for the commission of some crime or offence not of a political character and who has not received a full pardon therefor.
- (h) The fact that a person is a member of a club holding a club liquor licence shall not in itself disqualify him from being a member of a licensing court.

(2) Any person so disqualified who knowingly acts or sits as a member of a licensing court, shall on conviction be liable to a fine not exceeding one hundred and fifty pounds.

Appointment
of members.

13. Every person appointed by the Governor to be a member of a licensing court shall be appointed annually, or on the occurrence of any vacancy, and shall hold office until the thirty-first day of December in the year in which he is appointed, unless his office shall be vacated by death, resignation, or by his ceasing to reside in the licensing area.

When meet-
ings to be
held.

14. A meeting of the licensing court open to the public shall be held in each licensing area on the second Monday in the months of June and December in each year, at such place or places as the Governor may appoint, for the purpose of considering all applications for the granting, renewal, transfer or removal of any licence for or in respect of which notice in accordance with the provisions of this Ordinance has been given.

Quorum.

15. (1) In any licensing court constituted in accordance with the provisions of section 11 of this Ordinance three members shall form a quorum.

(2) If a quorum is not present on the day appointed as advertised, or at any adjournment thereof, the said meeting shall be adjourned from day to day until a quorum can be present to hold such meeting.

16. (1) The district commissioner of the district wherein a licensing court is appointed to be held shall preside at every meeting of the licensing court, but in his absence the members present may elect one of their number to preside.

The district commissioner to preside at meeting.

(2) The decision of the majority of members present shall be the decision of the court, and the officer or person presiding shall, in the case of an equality of votes, have a casting as well as a deliberative vote.

17. It shall be lawful for a licensing court to adjourn any meeting from time to time as it may think fit: Provided that no such adjournment or adjournments shall extend beyond a period of one month after the date of the first meeting of the court.

Adjournment.

18. The person presiding at any meeting of the licensing court shall, within seven days after such meeting or any adjournment thereof is concluded, cause to be forwarded to each district commissioner within the licensing area for which the court has been appointed a return signed by him specifying the names and places of residence of all persons to whom certificates have been granted by the court for the purpose of obtaining or renewing licences, and the nature of the licences authorized, granted or renewed in the respective districts, and shall, at the same time, forward to the Commissioner of Police a copy of such return and—

Returns of licences to be forwarded to district commissioner and to Commissioner of Police.

- (a) a return of the number of the licences existing immediately before the sitting of the court;
- (b) a return of the number of licences authorized to be renewed;
- (c) a return of the number of licences transferred to other premises;
- (d) a return of the number of new licences authorized to be granted; and
- (e) a return of the number of licences refused.

19. (1) Any person interested in any premises about to be constructed or in course of construction for the purpose of being used for the sale of intoxicating liquors for consumption on the premises, may apply to the licensing court

Provisional licences.

for the provisional grant of a licence in respect of such premises; and the licensing court, if satisfied with the plans submitted to it of such premises and if satisfied that if such premises had been actually constructed in accordance with such plans it would on application have granted such a licence in respect thereof, may make a provisional grant.

(2) A provisional grant shall not be of any validity until it has been declared to be final by the district commissioner of the district wherein a licensing court is appointed to be held.

(3) Such declaration shall be made if such district commissioner is satisfied that the premises have been completed in accordance with such plans as aforesaid and that no objection can be made to the character of the holder of such provisional licence.

Power of Governor to rectify omissions and order special meetings of licensing court.

20. (1) If through any accident or omission anything required by this Ordinance to be done is omitted to be done or is not done within the time fixed, the Governor may order all such steps to be taken as may be necessary to rectify any such error or omission and may validate anything which may have been irregularly done in matter or form, so that the intent and purpose of this Ordinance may have effect. The Governor may, if he thinks fit, also authorize the holding of a special meeting of any licensing court.

(2) Any licence granted at any special meeting of the licensing court shall continue in force only until the close of its next ordinary meeting.

Evidence to be given on oath.

21. (1) When any licensing court deems it necessary to take evidence respecting any question to be determined by such court, such evidence shall be given on oath (which oath the person presiding is hereby authorized to administer) and shall be filed on record in the office of the district commissioner of the district wherein a licensing court is appointed to be held.

False evidence perjury.

(2) If any person upon any examination on oath before any licensing court wilfully and corruptly gives false evidence such person shall be deemed to be guilty of perjury within the meaning of section 97 of the Penal Code.

No. 10 of 1930.

APPLICATIONS FOR LICENCES.

22. (1) Any person who desires to obtain a licence for the sale of liquor under this Ordinance (save and except where otherwise provided for) or the removal of any licence from the licensed premises to any other premises in the same district, or the transfer of a licence by the holder thereof to any other person, shall make application in writing to the district commissioner of the district wherein a licensing court is appointed to be held before the twenty-fifth day of April or the twenty-fifth day of October, as the case may be, setting forth his full name and address, the full names of his partners (if any), the nature or description of the licence required to be obtained or transferred, as the case may be, the number or names (if any) of the house and the street or road where the business is intended to be or is carried on, or, in the case of the transfer of a licence, the name of the person to whom the same is desired to be transferred: Provided that where any application as aforesaid through inadvertence is not made in due time, the district commissioner may, if he thinks fit, accept such application for the consideration thereof by the licensing court at the next meeting or any adjournment thereof on payment of such sum, not exceeding one hundred and fifty shillings, as he may impose, and upon such terms as to notice as he may prescribe.

When application for licence to be made.

Every application for a licence shall bear a stamp of ten shillings affixed by the applicant and cancelled by the district commissioner.

For the purposes of this sub-section an application for a Railway Restaurant Car Liquor Licence shall be made to the District Commissioner, Nairobi, and for this purpose "the court" shall mean the court for the licensing area within which Nairobi is situate.

(2) In the case of an application for the renewal of a licence no notice need be given, but no such application shall be considered by the licensing court unless such application is made on the first day of the meeting of such court.

(3) Any person who desires to obtain a licence under the provisions of which the sale of liquor for consumption on the premises will be authorized shall, in addition to complying with the requirements of sub-section (1) of this section, at the same time submit a plan of the premises in respect of which the application is made:

Provided that, if such premises have already been licensed and the application is made for a renewal or transfer of the licence, it shall not be obligatory on the applicant to submit such plan unless the licensing court may so order.

(4) In the case of an application for a Proprietary or Members' Club Licence the applicant shall, in addition to the other requirements of this section, furnish a statutory declaration to the effect—

- (a) that the club is managed by a committee of its members;
- (b) that such committee holds regular meetings of which proper minutes are kept;
- (c) that only members of the club (including bona fide honorary, temporary and reciprocity members) are permitted to pay for accommodation or refreshment supplied therein;
- (d) that no ordinary member of the club is elected less than fourteen days after nomination or without his name having been screened on the club premises for at least seven days;
- (e) that the election of such members is either by a committee, or by all members, of the club: provided that the rules of the club may disqualify from voting any member in arrears with any payment due to the club;
- (f) that no person resident within ten miles of the club house is eligible for honorary or temporary membership of the club for more than one unbroken period in any one year, save where—
 - (i) such eligibility is, in terms of the rules of the club, granted by reason of such person holding some public or religious office or being a bona fide candidate for membership; or
 - (ii) by resolution of the club committee such person is allowed the privileges of temporary membership by virtue of his engagement in any match or competition organized by the club committee:

Provided that in the case of a sports club a person paying a green or playing fee may be granted the privileges of temporary membership for the period covered by such fee;

(g) that proper accounts are kept; and

(h) that a register of ordinary members and of honorary members and reciprocity members is kept.

(5) (a) An application for a members' club licence in respect of the year 1935 by a members' club formed before and in existence on the thirty-first day of December, 1934, shall be made in accordance with the provisions of this section before the twenty-fifth day of April, 1935, and if the grant of a licence is approved by the licensing court such licence shall be issued with retrospective effect to the first day of January, 1935.

Members' club
licence for
1935.

(b) Between the first day of January, 1935, and a date to be fixed by the Governor by notice in the Gazette (which date shall be as soon as possible after the sitting of the licensing court in June, 1935) a members' club formed before and in existence on the thirty-first day of December, 1934, shall be deemed to be in possession of a members' club licence.

23. (1) The district commissioner on receiving an application under section 22 of this Ordinance, shall cause to be posted in some conspicuous place at or in his office a notice containing the name of the applicant, the situation of the premises in respect of which the application is made, and the day on which and place where the licensing court will sit for hearing such application, and a copy of such notice shall be sent by post or otherwise to every member constituting such court, and to the Government Printer for publication in the Gazette.

The district
commissioner
to publish
notice of
application.

(2) The district commissioner shall, as soon as possible after receiving such application, cause the name of such applicant as aforesaid to be sent to the Commissioner of Police and, where the application is in respect of premises situate within a municipality, to the town clerk of such municipality. It shall be the duty of the Commissioner of Police before the hearing of the application to report as fully as possible to the licensing court on all matters which would affect the decision of the licensing court in respect of such application as aforesaid.

(3) The notice mentioned in sub-section (1) of this section shall be posted and published at least thirty days before the sitting of the said court: Provided that no licence authorized to be granted by any such court shall be capable of being questioned on the grounds that any such notice was not duly posted, published or sent as aforesaid.

Death or
insolvency of
applicant.

24. If an applicant, after applying for the grant or renewal or removal of a licence, dies or files his petition in bankruptcy on or before the day fixed for the consideration of his application, the licensing court may, if it thinks fit, grant a certificate for such licence to the widow of any deceased applicant or to the executor, administrator, receiver, or trustee, as the case may be, of the estate of such applicant.

OBJECTIONS TO APPLICATION FOR LICENCES.

Who may
object to issue
of licences.

25. Any European member of the police force, acting on the general or special instructions of the Commissioner of Police, or any person residing in a district wherein a licence is applied for, may either individually or jointly with others object to the grant or renewal of a licence.

Objections,
how to be
made.

26. (1) All objections to the grant or renewal of a licence shall be made in writing to the district commissioner of the district wherein a licensing court is appointed to be held; and, where the objection is to the renewal of a licence, notice thereof stating the reason for such objection shall be given to the applicant personally or by means of a registered letter by the person or persons objecting at least ten days before the hearing of the application by the licensing court.

(2) A licensing court may hear an objector to the grant or renewal of a licence notwithstanding that such objector has not sent his objection to such district commissioner: Provided that in such case, the court shall, if the applicant so demands, adjourn the hearing of the application for at least ten days.

(3) (a) Every applicant for a new licence shall, save as herein provided, appear in person before the licensing court and shall prove to the satisfaction of such licensing court that there is a real necessity for the provision being made for the sale of intoxicating liquor in the particular locality in which the premises, in respect of which the application is made, are situate. Such applicant may be called upon by the court to answer on oath such questions as it may think necessary: Provided that it shall be lawful for the applicant and any applicant for removal, transfer or renewal of a licence to be represented at the hearing by an advocate.

(b) The licensing court may, however, require the attendance of the person applying for the renewal of a licence or the responsible manager of the premises in respect of which the licence is applied for, and may call upon such person or manager to answer on oath such questions as the court may think necessary and relevant to the inquiry at issue.

(3) Any objector to the grant or renewal of a licence may appear personally before the licensing court or may be represented by an advocate.

(4) The council or board of any municipality may, by writing under the hand of the chairman thereof, authorize any person to appear before the licensing court for the purpose of objecting on behalf of the inhabitants to the grant or renewal of a licence within the area of such municipality.

27. The licensing court may refuse to grant or to renew a licence, or may grant or renew a licence subject to such conditions, not repugnant to the provisions of this Ordinance, as it may deem fit, and such conditions shall be embodied in the licence :

Court may refuse to grant or renew a licence.

Provided that a court shall only refuse to renew a licence when it is proved to its satisfaction that—

- (a) the holder thereof has been convicted of an offence against the provisions of this Ordinance; or
- (b) the holder thereof has had a sentence of imprisonment imposed upon him for the commission of some crime or offence (not of a political character) without the option of a fine and who has not received a full pardon therefor; or
- (c) the business is conducted in an improper manner; or
- (d) that the conditions upon which the licence (in respect of which the application for renewal has been made) was granted have not been satisfactorily fulfilled :

Provided further that the licensing court may only refuse to grant or to renew a Proprietary Club Liquor Licence or a Members' Club Liquor Licence on the following grounds—

- (a) that the proprietor, manager or secretary of the club has been convicted of an offence against this Ordinance; or
- (b) that the rules of the club do not conform to the requirements specified in sub-section (4) of section 22 of this Ordinance; or
- (c) that the rules specified in sub-section (4) of section 22 of this Ordinance are habitually contravened by the club or any member thereof.

And when there is no objection.

28. (1) The licensing court may of its own motion take notice of any matter or thing which, in the opinion of the members thereof, would constitute an objection to the grant or to the renewal, transfer or removal of a licence, notwithstanding that no objection has been made thereto by any person.

(2) In any case when the application is for the renewal, transfer or removal of a licence, the court shall inform the applicant of the objection, and shall if the applicant so requests adjourn the further consideration of the application for any period of not less than seven days, to enable the person affected by such objection to have the opportunity of replying thereto.

(3) The court shall after such adjournment give notice in writing, signed by the president, to the person affected of the cause of objection and of the day on which the adjourned application will be considered.

Extension of existing licences when renewal disallowed.

29. If the renewal of a licence held by any person is refused by the licensing court, and if such person has not during the preceding twelve months been convicted of any offence against this or any other law relating to the sale of intoxicating liquors, he shall, upon payment of a proportionate part of the cost of a licence such as that held by him, be entitled to obtain a licence for such period, not being less than one month, as the licensing court shall determine for the purpose of disposing of the liquor then on the premises. Such period shall commence from the day after the last day of the sitting of the court by which the renewal of his licence had been refused or from the termination of his existing licence, whichever day is the later.

CASES IN WHICH LICENCES CANNOT BE GRANTED
OR TRANSFERRED.

When grant shall be disallowed.

30. It shall not be competent for the licensing court to grant a new licence when any of the following objections are proved to its satisfaction :—

- (1) That the applicant is of bad fame or bad character or of drunken habits, or has previously forfeited a licence or has been convicted at any time previous to his application of selling liquor without a licence.
- (2) That the number of premises already licensed is sufficient for the requirements of the neighbourhood.

- (3) That the premises in respect of which the application is made are out of repair or are not kept in a clean and wholesome condition.

31. It shall not be competent for the licensing court to grant a new licence or the transfer of a licence to any person—

Persons to whom a licence shall not be granted.

- (1) who, in this Colony or elsewhere, has had a sentence of imprisonment imposed upon him for the commission of some crime or offence (not of a political character) without the option of a fine and who has not received a full pardon therefor;
- (2) who, in the case of a retail licence, is not residing in this Colony;
- (3) who is under the age of twenty-one years;
- (4) who is a native, a Swahili, a Somali, a Baluchi born in Africa, or Malagasy, or a Comoro Islander.

The premises in respect of which a licence is issued or transferred to any person disqualified under this section shall be closed for the sale of liquor by order of the district commissioner of the district in which a licensing court is appointed to be held for the licensing area in which the premises are situate, until such time as the licence is transferred.

TRANSFER AND REMOVAL OF LICENCE.

32. The holder of a licence (other than a club licence) who, during the currency thereof, sells or disposes of his business or the house or premises in respect of which such licence was granted, may make application to the district commissioner of the district in which a licensing court is appointed to be held for the licensing area in which such premises are situate, for a temporary transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises, as the case may be; and such district commissioner may, if he thinks fit and upon payment by the applicant of the sum of thirty shillings, grant a temporary transfer of such licence accordingly.

Transfer of licence.

33. The holder of any licence, who desires to remove his licence from the licensed premises to any other premises in the same licensing area, may make application to the district commissioner of the district in which a licensing court is appointed to be held for the licensing area in which the premises to which it is proposed to remove the licence are

Removal of licensed premises.

situate for permission to remove such licence; and such district commissioner, if satisfied that to wait for the next meeting of the licensing court would subject such holder to serious loss or inconvenience and if he thinks fit, after hearing any objections to such removal, may, upon payment by the applicant of the sum of thirty shillings, authorize such removal after not less than thirty days' notice of such application has been affixed in a conspicuous place on the outside of the premises to which it is proposed to remove the licence, and at such district commissioner's office.

Fresh applica-
tion to be
made.

34. Any person to whom a licence may be temporarily transferred and any person who may be authorized to remove his licence to other premises and any person to whom a provisional licence has been granted shall, at the next meeting of the licensing court, apply for a licence as if he were not a licensed person.

Where
transfer or
removal not
ratified.

35. A licensing court shall not be bound to ratify a temporary transfer or removal sanctioned by a district commissioner; and, should it refuse to do so at its next meeting after considering the application made in respect thereof, such licence shall, as to the person to whom the same was originally granted or in respect of the premises originally licensed, be considered to be in the same position as if no such transfer or removal has taken place; and an application for the renewal of the licence by the transferee shall at the request of the transferor be deemed and taken to be an application by him for such renewal.

Death of
holder of
licence.

36. In the event of the death of the holder of any licence, the widow (if any) or the executor or administrator of the deceased person, or any person approved by a district commissioner, and in case of bankruptcy the trustee or receiver of the estate of such bankrupt, may carry on the business until the next meeting of the Licensing Court either personally or by an agent, approved of in writing by a district commissioner, without any formal transfer of the licence.

Power and
duties of
representative
of deceased.

37. Any person to whom a licence may be temporarily transferred, or who may be carrying on or conducting the business of licensed premises as the widow or executor or administrator of the estate of any deceased person or as the person approved by such district commissioner or as the trustee

or receiver of any estate of any bankrupt or as any approved agent of any such widow, executor, administrator, trustee or other person shall possess all the rights and be subject and liable to all the duties, obligations and penalties of the original holder of the licence.

OFFENCES.

38. (1) No person who is not licensed shall have any words or letters on his premises importing that he is licensed, and no licensed person shall have any words or letters importing that he is licensed in any way other than that in which he is duly licensed. Sign board

(2) Any person guilty of a contravention of this section shall be liable to a fine of seventy-five pounds, and in default of payment to imprisonment for a term not exceeding three months.

39. (1) No person shall sell, barter, give or otherwise supply to any native, Swahili, Somali, Baluchi born in Africa, Malagasy, or Comoro Islander, any intoxicating liquor: Provided that liquor may be supplied to a native, a Swahili, a Somali, a Baluchi born in Africa, a Malagasy, or a Comoro Islander, for medicinal purposes (save as may be prescribed by Rules made under paragraph (c) of section 65 of the Ordinance) or sacramental use, and in such case the burden of proof shall be upon the person who supplied the liquor to show that it was required for such purpose. Native not to be supplied.

(2) Any person contravening the provisions of this section shall on conviction be liable:—

- (a) For a first offence to a fine not exceeding one hundred and fifty pounds, and in default of payment to imprisonment for a term not exceeding six months.
- (b) For a second offence to a fine of not less than seventy-five pounds, but not exceeding two hundred pounds, and in default of payment to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.
- (c) For a third or any subsequent offence to imprisonment for a period of not less than two years and not exceeding three years, and in addition to such imprisonment at the discretion of the court to a fine not exceeding twelve hundred pounds, and in default of payment to imprisonment for a further period not exceeding two years.

(3) In any summons or charge for an offence against the provisions of this section, it shall not be necessary to set out the names of the natives, Swahilis, Somalis, Baluchis born in Africa, Malagasies, or Comoro Islanders, to whom intoxicating liquor is alleged to have been sold, bartered, given or otherwise supplied; but it shall be sufficient to allege that such sale, barter, gift or supply was effected to natives, Swahilis, Somalis, Baluchis born in Africa, Malagasies, or Comoro Islanders, as the case may be: Provided that nothing in this sub-section contained shall render it unnecessary to set out accurately in such charge all other material particulars of the charge.

(4) Any holder of a licence who is convicted of contravening the provisions of sub-section (1) of this section shall, in addition to any other penalty, forfeit his licence, and in such case no licence shall at any time thereafter be granted to such person unless and until he shall have received a free pardon for such conviction.

Persons prohibited from selling liquor.

40. (1) No holder of any liquor licence shall employ a person under the age of eighteen or a person convicted of any offence under this Ordinance to sell intoxicating liquor.

(2) Any person knowingly contravening the provisions of this section shall be liable to a fine not exceeding seventy-five pounds, and in default of payment to imprisonment for a period not exceeding three months.

Habitual drunkard or native not to obtain liquor.

41. (1) No habitual drunkard or native, Swahili, Somali, Baluchi born in Africa, Malagasy, or Comoro Islander shall obtain by purchase or barter or be in possession of any intoxicating liquor.

Penalty.

(2) Any person contravening the provisions of this section shall on conviction be liable to imprisonment for a period not exceeding six months.

Onus of proof as to whether a person is a native or not.

42. If, in any proceedings under sections 39, 40 or 41 of this Ordinance, there shall be any question as to whether any person is or is not a native, or a Swahili, or a Somali, or a Baluchi born in Africa, or a Malagasy, or a Comoro Islander, the onus shall be upon the accused to show that he is not a native, or a Swahili, or a Somali, or a Baluchi born in Africa, or a Malagasy, or a Comoro Islander, as the case may be.

43. The holder of any licence who is convicted of any of the following acts or offences shall be liable in respect of each act or offence to a fine not exceeding fifteen pounds, and in default of payment to imprisonment for a period not exceeding one month :—

Offences by
licence holder.

- (1) Permitting drunkenness or any riotous or quarrelsome conduct to take place upon his premises.
- (2) Selling liquor to any person already in a state of intoxication, or, by any means, encouraging or inciting any person to drink liquor.
- (3) Knowingly selling liquor to any police officer of or below the rank of assistant inspector during any time appointed for such police officer to be on duty, unless such police officer produces the written permission of his superior officer, or knowingly harbouring or suffering to remain on his premises any such police officer during such time as aforesaid except for the purpose of keeping or restoring order or in the execution of his duty.
- (4) Permitting his premises to be used as a brothel or the habitual resort or place of meeting of reputed prostitutes.
- (5) Keeping his licensed premises open for the sale of liquor or selling or exposing any liquor for sale during any time when he is not authorized by his licence to sell; or allowing any liquors purchased before the hour of closing to be consumed on such premises after such closing hours.

In the event of a second or subsequent conviction, every such holder shall be liable to a fine not exceeding thirty pounds, and in default of payment to imprisonment for a period not exceeding two months.

44. Any person who, contrary to the provisions of this Ordinance, sells or deals in or disposes of any intoxicating liquor without a licence, or sells or offers or exposes for sale any such liquor at any place where he is not authorized by his licence so to sell, or who sells or deals in or disposes of any intoxicating liquor in any manner other than is provided for in the conditions of his licence shall on conviction be liable to the penalties provided in sub-section (2) of section 39 of this Ordinance, and all liquor found on the premises may be forfeited.

Trading with-
out a licence.

Club licence;
abuse of.

45. Any holder of a Club Liquor Licence who sells or allows to be sold liquor to any person not being a member of such club, shall be liable for each offence to a fine not exceeding one hundred and fifty pounds, and in default of payment to imprisonment for a period not exceeding six months.

Offences by
retail licence
holders ren-
dering licence
holder liable
to forfeiture
and penalties.

46. The holder of any retail liquor licence shall be liable to forfeit such licence in addition to any other penalty by this Ordinance provided :—

- (1) If he permits any other person to manage, superintend or conduct the business of the licensed premises during his absence for a longer period than one month without the consent in writing of the district commissioner of the district in which the licensing court is appointed to be held for the licensing area in which the premises are situate.

Any person who at any time is lawfully managing, superintending or conducting the business of the holder of any licence shall be subject and liable to the same duties, obligations and penalties as such holder : Provided that nothing herein contained shall be taken to relieve the holder of any duties, obligations or penalties to which he may by law be subject or liable.

- (2) If he, whether he is present in such premises or not, permits any unlicensed person to be in effect the owner or part owner of or interested in the business of the licensed premises except with the consent of such district commissioner.
- (3) If he is convicted of any offence under this Ordinance and a previous conviction within the preceding twelve months of the same or any other offence under this Ordinance or three previous convictions within the preceding five years is or are proved.
- (4) If he is twice convicted within the year of selling, offering or keeping for sale any adulterated liquor.

Evidence of
sale of liquor.

47. (1) In any proceeding relating to any offence under this Ordinance it shall not be necessary to show that any money actually passed or that any liquor was actually consumed if the court hearing the case is satisfied that a transaction in the nature of a sale actually took place or that any consumption was about to take place.

(2) (a) Proof of consumption or intended consumption of liquor on licensed premises by some person other than the occupier or member of his family or servant in such premises shall be evidence that the liquor was sold by or on behalf of the holder of such licence to the person consuming or about to consume such liquor.

(b) If any vendor of non-intoxicating beverages not being duly licensed shall supply intoxicating liquor to mix or be taken with such beverage, he shall be deemed to have sold such intoxicating liquor.

48. In any proceeding against any person for selling or allowing to be sold any liquor without a licence, such person shall be deemed to be unlicensed unless he produces his licence or gives other satisfactory proof of his being licensed. The fact of any person not holding a licence having any sign-board or notice importing that he is licensed upon or near his premises or having a house or premises fitted with a bar or other place containing bottles, casks, or vessels so displayed as to induce a reasonable belief that liquor is sold or served therein or having liquor concealed or more liquor than is reasonably required for the person residing on such premises, shall be deemed to be prima facie evidence of the unlawful sale of liquor by such person.

Onus of proof.

49. If any person, other than the licence-holder, a member of his family, his agent or servant, or a person lodging in the licensed premises, is found in any bar on such premises during the hours in which the sale or disposal of liquor to the public is prohibited it shall be taken to be prima facie evidence of a sale of liquor during such hours, and the licence-holder on whose premises any such person is found during such hours shall be liable to a fine not exceeding fifteen pounds or in default of payment to imprisonment for a period not exceeding one month: Provided that nothing in this section contained shall apply in the case of persons passing through any bar in any licensed premises for the sole purpose of obtaining access to any other part of such premises.

Persons on premises of licence holder during prohibited hours.

50. Any person convicted of contravening any of the provisions of this Ordinance, for or in respect of which no penalty is specially provided, shall be liable to a fine not exceeding thirty pounds, and in default of payment to imprisonment for any period not exceeding three months, and when a penalty has been provided for any offence without any period

Offences for which no penalty provided.

of imprisonment in default of payment thereof, then the person convicted of such offence shall be liable :—

If the penalty does not exceed fifteen pounds, to imprisonment for a period not exceeding two months.

If the penalty exceeds fifteen pounds and does not exceed fifty pounds, to imprisonment for a period not exceeding four months.

If the penalty exceeds fifty pounds, to imprisonment for a term not exceeding six months.

Convictions against holder to be endorsed on licence.

51. (1) Every conviction against a licence-holder shall be endorsed by the magistrate on the licence of the convicted person and every application to the licensing court for a renewal of the licence shall, if required by the licensing court, be accompanied by the licence.

(2) Any licensed person convicted of an offence under this Ordinance shall, on demand being made by the court convicting him, produce his licence. Any such person refusing so to produce his licence shall be liable to a fine not exceeding fifteen pounds.

Notice of conviction to be served on the owner of premises.

52. (1) When any tenant of any licensed premises is convicted of an offence against this Ordinance it shall be the duty of the magistrate convicting such tenant to serve a notice of such conviction on the owner of the premises.

(2) Where any order of a court declaring any licensed premises to be disqualified from receiving a licence for any period has been made, the court shall, where the owner is not the occupier, cause such order to be served on the owner of such premises, with the addition of a statement that the court will sit at a time and place therein specified at which the owner may appear and appeal against such order on all or any of the following grounds but on no other grounds—

(a) that notice of a prior offence, which on repetition renders the premises liable to be disqualified from receiving a licence for any period, was not served on the owner as required by this section;

(b) that the tenant by whom the offence was committed held his tenancy under a contract and that the owner could not legally have evicted the tenant in the interval between the commission of the offence in respect of which the disqualifying order was made and the receipt by him of the notice of the immediately preceding offence which on repetition renders

the premises liable to be disqualified from receiving a licence for any period ; or

- (c) that the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice, that the owner, notwithstanding that he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which occurred between the said notice and the second offence.

(3) If the owner appears at the time and place specified, or at the place to which the court may be adjourned for the purpose, and satisfies the court that he is entitled to have the order cancelled on any of the grounds aforesaid, the court shall thereupon direct such order to be cancelled, and the same shall be void.

53. (1) Any licensed person may refuse to admit to and may turn out of the premises in respect of which his licence is granted any person who is drunken, violent, quarrelsome, or disorderly, or whose presence on his premises would subject him to a fine or penalty under this Ordinance.

Power to expel drunkards from licensed premises.

(2) Any such person who, upon being requested in pursuance of this section by such licensed person or his agent or servant or any police officer to quit such premises, refuses or fails so to do, shall be liable to a fine not exceeding seven pounds ten shillings.

(3) All police officers are required on the demand of such licensed person, agent or servant, to expel or assist in expelling every such person from such premises and may use such force as may be required for the purpose.

54. Any person, who knowingly supplies liquor to a person under the apparent age of eighteen years, except for medicinal purposes or sacramental use, or to a habitual drunkard, shall be liable on conviction in respect of each such act to a fine not exceeding fifteen pounds and in default of payment to imprisonment for a period not exceeding one month.

Penalty for supplying liquor to habitual drunkard or person under 18 years.

POWERS AND DUTIES OF DISTRICT COMMISSIONERS AND POLICE OFFICERS.

55. (1) It shall be the duty of the officer in charge of police in every district to report to the district commissioner of the district in which a licensing court is appointed to be held for any licensing area, any licensed premises which are

Report by Chief Officer of Police.

out of repair, or have not reasonable accommodation or proper or sufficient sanitary or drainage requirements, and any case in which the holder of a licence is of drunken habits or keeps a disorderly house.

(2) Any European police officer, acting on the instructions of his superior officer, may enter any licensed premises, other than a proprietary or a members' club, during the hours such premises are open and inspect and examine every room and part thereof for the purpose of the report in the last sub-section mentioned.

(3) Any European police officer may enter any licensed premises, other than a proprietary or members' club, at any time when he has reasonable grounds for believing that liquor is being sold on such premises contrary to the provisions of this Ordinance.

(4) In the case of a proprietary or members' club, the powers of entry and inspection conferred by sub-sections (2) and (3) of this section and by section 56 of this Ordinance may be exercised by a European police officer acting on the written instructions of the Commissioner of Police.

(5) Any person resisting or obstructing a police officer in the execution of his duty as aforesaid, shall be liable on conviction to a fine not exceeding seventy-five pounds and in default of payment to imprisonment for a period not exceeding three months.

56. (1) A licence authorizing the sale of intoxicating liquor shall be displayed in a prominent place on the premises where such liquor is sold; and, subject to the provisions of sub-section (5) of section 55, it shall be lawful for any magistrate or European police officer to enter in or upon such premises to inspect such licence.

(2) Any holder of a licence failing so to display such licence or refusing permission or failing to allow such magistrate or European police officer to inspect such licence shall be liable to a fine not exceeding fifteen pounds and in default of payment to imprisonment for a period not exceeding one month, or to such imprisonment without the option of a fine.

Arrest of
intoxicated
persons.

57. (1) Any person found by a police officer to be drunk and incapable, or drunk and disorderly in or near a street, road, or other public thoroughfare, or in a public-house, shop, warehouse, hotel, or any other public place, may be arrested without warrant and brought without any unnecessary delay before a magistrate.

(2) Any such person shall on conviction be liable to a fine not exceeding ninety shillings and in default of payment to imprisonment for a period not exceeding seven days, and for a second or subsequent conviction he shall be liable to a fine not exceeding fifteen pounds and in default to imprisonment for a period not exceeding one month.

58. (1) It shall be lawful for any police officer, having a special written authority from a magistrate, at all reasonable hours to enter any unlicensed premises or any wagon, cart, or other vehicle in which he has reason to suspect that any intoxicating liquor is sold or kept for sale, and search such premises, wagon, cart or other vehicle.

Inspection of unlicensed premises by police.

(2) Any liquor found in the course of such search may be seized and removed, and may be declared forfeited by any court on conviction of the owner or person found in possession thereof: Provided that, when there is any danger that the delay occasioned by obtaining such written authority will defeat the objects of this section, any police officer may exercise the powers hereby conferred without any written authority, but he shall as soon as possible report the action he has taken to a magistrate.

59. (1) Any police officer may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Ordinance, and if such person refuses to comply with such demand or gives a name or address which the police officer demanding the same has reasonable grounds to believe to be false, he may arrest such person without warrant and take him as soon as possible before a magistrate.

Police may demand the name and address of person on premises.

(2) Any such person who refuses to give his name or address when so demanded as aforesaid or gives a false name or address shall on conviction be liable to a fine not exceeding seven pounds ten shillings.

60. Any police officer may arrest without warrant any person whom he has reasonable grounds to believe has committed an offence under sections 39, 41 or 44 of this Ordinance, and shall take such person before a magistrate as soon as possible.

Police may arrest without warrant in certain cases.

61. The conviction of a habitual drunkard shall be forthwith reported by the convicting magistrate to the Commissioner of Police, who shall inform all licensed persons of such conviction.

Conviction of habitual drunkard to be reported to Commissioner of Police for information of licensed persons.

Debts not recoverable in respect of sale of liquor for consumption on premises.

62. No action shall be maintainable to recover any debt alleged to be due in respect of the sale or supply of any intoxicating liquor which was delivered for consumption on the premises where sold or supplied unless the person to whom the same was sold or supplied was at the time of such sale or supply a lodger on such premises.

MISCELLANEOUS.

Licences to expire on the thirty-first day of December.

63. (1) Every licence granted on a certificate from the licensing court may be issued for six or twelve months, but shall expire on the thirty-first day of December of the year in which it was issued : Provided that in every case in which an application for the renewal of a licence is made, such licence shall continue in force until the conclusion of the meeting of the licensing court at which such application is made.

(2) Where the fee payable for a licence for twelve months is thirty pounds or over such fee may be paid in two equal instalments :

Provided that if the second instalment is not paid by the thirtieth day of June in the year in which the licence was issued such licence shall be deemed to have lapsed with effect from that date.

Prohibition of payment of wages on licensed premises.

64. Any master or other person employing workmen, servants, or labourers, who pays or causes any payment to be made to any such workman, servant or labourer in the bar of any premises licensed for the sale of liquors, shall for every such offence be liable to a fine not exceeding fifteen pounds : Provided that nothing herein contained shall extend to any holder of any liquor licence who pays upon his own licensed premises the workmen, servants, or labourers employed by him in connection with his licensed premises.

Power to make Rules.

65. The Governor may make Rules—

- (a) regulating the proceedings and meetings of licensing courts ;
- (b) prescribing the forms of licences, notices or documents for use under the provisions of this Ordinance ;
- (c) prohibiting, restricting, or controlling, the sale of intoxicating medicines ; and
- (d) generally for the better carrying out of the provisions of this Ordinance.

Costs incurred in legal proceedings.

66. The costs incurred by the members of any licensing court in connection with legal proceedings instituted against them in their official capacity, shall, unless the court before

which the proceedings are taken order the costs to be borne by the opposite party or by the said members personally, be paid to them by the Treasurer out of the revenues of the Colony.

67. The Liquor Ordinance (Chapter 71 of the Revised Edition) as amended by the Liquor (Amendment) Ordinance, 1930, and the Liquor (Amendment) Ordinance, 1931, is hereby repealed. Repeal.
No. 52 of 1930.
No. 38 of 1931.

SCHEDULE.

(1) The following fees are payable for or in respect of Liquor Licences granted, renewed or transferred:—

	For twelve months		For six months	
	£	s.	£	s.
(a) Wholesale Liquor Licence	25	0	14	0
(b) Hotel Liquor Licence	20	0	11	10
(c) Restaurant or Café Liquor Licence	30	0	16	10
(d) Malt Liquor Licence	7	10	4	10
(e) Wine Merchants' or Grocers' Liquor Licence	30	0	16	10
(f) General Retail Liquor Licence—				
(i) In respect of premises situate in or within three miles of the boundaries of Nairobi Municipality or Mombasa Municipality	60	0	31	10
(ii) In respect of premises situate in or within three miles of the boundaries of Nakuru Municipality, Eldoret Municipality, Kitale Township or Kisumu Township or such other townships as the Governor may by proclamation declare	45	0	23	10
(iii) In respect of premises situate elsewhere	35	0	18	10
(g) Proprietary Club Liquor Licence	45	0	24	0
(h) Members' Club Liquor Licence—				
(i) In respect of clubs situate in or within three miles of the boundaries of Nairobi Municipality or Mombasa Municipality	3	0	—	
(ii) In respect of clubs situate elsewhere	1	10	—	
(i) Railway Station Liquor Licence	15	0	9	0
(j) Theatre Liquor Licence	30	0	16	10
(k) Brewers' Liquor Licence	30	0	16	10
(l) Steamship Liquor Licence	10	0	6	00
(m) Canteen Liquor Licence	7	10	4	10
(n) Railway Restaurant Car Liquor Licence	15	0	9	0
(o) Temporary Liquor Licence	1	10	a	day
(p) Temporary Extension Licence—				
(i) In respect of premises situate in or within three miles of the boundaries of Nairobi Municipality or Mombasa Municipality	Sh. 15 per hour			
(ii) In respect of premises situate elsewhere	Sh. 10 per hour			
(q) Camp Canteen Licence	Sh. 10 each			

(2) The holder of a General Retail Liquor Licence may hold an Hotel Liquor Licence or Café Liquor Licence in respect of the same premises for the same period without the payment of any licence fee in addition to the fee paid by him in respect of his General Retail Liquor Licence.

(3) A holder of a Railway Station Liquor Licence granted in respect of a railway rest-house may hold an Hotel Liquor Licence in respect of such rest-house for the same period on payment of one-quarter of the fee prescribed for an Hotel Liquor Licence in addition to the amount paid by him in respect of his Railway Station Liquor Licence.

No. LXIII of 1934

Assented to in His Majesty's name this thirty-first day
of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

**An Ordinance to provide for the Licensing of
Certain Professions, Businesses, Trades, Arts,
Callings and Industries within the Colony
and to Fix the Licence Fees Payable.**

1st January, 1935

Date of
commencement

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

1. This Ordinance may be cited as the Licensing Short title.
Ordinance, 1934, and shall come into operation on the 1st day
of January, 1935.

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

“accountant and/or auditor” means any person who
practises as such;

“advocate” means a practising advocate who is resident
in the Colony;

“architect” means any person registered as such under
the provisions of the Architects and Quantity Surveyors No. 60 of 1933.
Ordinance, 1933;

“banker” means any company, person or body of
persons, British or foreign, whether incorporated or not, and
whether registered in the Colony or not, engaged in the
business of banking in the Colony who shall be declared by
the Governor in Council by notice to be a banker for the
purposes of this Ordinance;

“businesses” means any of the businesses, trades, arts,
callings or industries set out in Schedule B, Schedule C and
Schedule D to this Ordinance;

“commercial traveller” means any person who, not being
ordinarily resident in the Colony, solicits orders for goods on
behalf of other persons but does not include a person employed
as a traveller by a firm or persons licensed under this
Ordinance;

"commission agent and/or manufacturer's representative" means any person resident in the Colony who receives or orders from abroad goods on account of others, whether such goods are imported in his own name or not;

Cap. 119. "dentist or dental surgeon" means any person practising as such and registered under the Medical Practitioners and Dentists Ordinance;

"exchange banker" means a person who carries on for profit the business of operating in foreign currency outside the Colony but shall not include a money-changer or any company, person or body of persons who may hold a licence as a banker;

"hawker" means any person who, whether as principal, agent or employee, carries on the trade or business of offering or exposing for sale, barter or exchange elsewhere than at a fixed place any goods and for that purpose travels about from place to place with goods on any vehicle (other than a vehicle propelled by himself), or with a pack animal or carrier;

"hotel, boarding and/or lodging house" means any premises in which not less than two bed or sleeping rooms are set apart and furnished for letting;

"house agent" shall not include a person who acts only as a rent collector;

"licensing authority" means the Treasurer or any person appointed by the Treasurer to be a licensing authority;

Cap. 119. "medical practitioner" means any person practising as such and registered under the Medical Practitioners and Dentists Ordinance;

"oil company" means any person or body of persons, incorporated or unincorporated, carrying on, either as principal or agent, the business of importation and wholesale distribution of dangerous petroleum or petroleum as defined by the Indian Petroleum Act, 1899, as applied to the Colony;

"pedlar" means any person who, whether as principal, agent or employee, carries on the trade or business of offering or exposing for sale, barter or exchange elsewhere than at a fixed place any goods and for that purpose travels with his goods from place to place either on foot or with a vehicle propelled by himself;

"profession" means any of the professions set out in Schedule A to this Ordinance;

“quantity surveyor” means any person registered as such under the provisions of the Architects and Quantity Surveyors Ordinance, 1933;

No. 60 of 1933.

“restaurant” means any place where food is sold for consumption on the premises;

“shipping company” means any person or body of persons, incorporated or unincorporated carrying on, either as principal or agent, the business of carrying goods or passengers overseas in mechanically propelled vessels, but the term does not include passenger agents or shipping companies engaged solely in coasting trade within the meaning of the Shipping Ordinance, 1930, or the agents of such companies.

No. 51 of 1930.

3. (1) No person shall for profit or for gain practise or carry on in the Colony, whether as principal or agent, any profession or business as defined in section 2 of this Ordinance, unless he holds a licence for the time being in force issued under the provisions of this Ordinance authorizing him to do so.

Profession or business to be licensed.

(2) No person shall for profit or for gain practise or carry on in the Colony whether as principal or agent, any business as defined in section 2 of this Ordinance in any place other than that specified in his licence :

Provided that any single transaction for a commission on the sale of land shall be treated as carrying on the business of a land agent for gain.

(3) Nothing in this Ordinance contained shall be deemed to confer upon a person holding any licence under this Ordinance the right to practise any profession, or to carry on any business which he is not authorized by law to practise or to carry on.

(4) Save as is provided in section 4 of this Ordinance a person shall not be deemed to be practising a profession or carrying on any of the businesses specified in Schedule B to this Ordinance if such person is not practising a profession or carrying on business on his own account and is a full-time employee of, and is in receipt of a salary and/or commission from, a person or business duly licensed under this Ordinance.

Exceptions.

(5) If any person contravenes the provisions of this section, he shall be liable for a first offence to a fine not exceeding fifty pounds or in default of payment to imprisonment for any term not exceeding two months, and for a

Offence.

second or subsequent offence to a fine not exceeding two hundred and fifty pounds or in default of payment to imprisonment for a term not exceeding six months.

**Separate
licences.**

4. (1) Where two or more members of a firm practise a profession, each of the said members shall take out a separate licence in his own name.

Advocates.

(2) No person other than a person employed in the service of Government or of the Railways and Harbours Administration, or a person solely employed by a municipal council or board shall practise as an advocate, whether in receipt of a salary or not, unless he is duly licensed under this Ordinance.

**Kinds of
licences.**

5. (1) Professional licences shall be of the kind described in Schedule A to the Ordinance and business licences shall be of the kinds described respectively in Schedule B, Schedule C and Schedule D to this Ordinance; and, subject to the provisions of sub-section (2) of section 6 and of sub-section (2) of section 17 of this Ordinance, the annual fee for each licence shall be that set opposite to the description of such licence in such Schedules.

(2) (a) The Governor in Council may, by order in the Gazette, authorize the exercise of any profession, business, trade, art, calling, or industry not specifically mentioned in this Ordinance, upon payment of such licence fee, and upon such conditions, as to him may seem fit.

(b) When an Order has been made by the Governor under paragraph (a) of the sub-section the licensing authority shall issue a special licence for the exercise of such profession, business, trade, art, calling or industry on payment of the fee, and subject to the conditions prescribed in such Order.

**Period of
validity of
licences.**

3. (1) Licences under this Ordinance shall become due on the first day of January in each year and shall expire on the thirty-first day of December next following: Provided that—

(a) in any case where the annual fee for a licence is not less than one hundred shillings, it shall be lawful for a licensing authority to issue in any year a licence which shall expire on the thirtieth day of June in the same year of issue and the amount of fee payable for such licence shall be half the amount of the annual fee;

(b) a licence to carry on the business of a commercial traveller may be taken out upon any day in each

year but shall expire within a period of three months from the date upon which such licence fell due to be taken out.

(2) Where a licence is due after the thirtieth day of June in any year, the fee for the licence shall be one-half of the annual fee specified in this Ordinance, and where a licence is due after the thirtieth day of September in any year, the fee for that licence shall be one-quarter of the fee so specified.

7. (1) Any person to whom a professional licence or a business licence has been issued under the provisions of this Ordinance may, if he ceases to carry on the business, or ceases to practise the profession, in respect of which the licence has been issued, surrender such licence to a licensing authority.

Surrender of licences.

(2) When a licence is surrendered under the provisions of sub-section (1) of this section, then—

- (a) if the licence has six months or more to run, one-half of the fee paid shall be returned to the licensee;
- (b) if the licence has less than six and more than three months to run, one-fourth of the fee paid shall be returned to the licensee.

8. (1) A business licence may, by endorsement of a licensing authority and on payment of a fee of five shillings, be transferred to different premises.

Transfer of licences.

(2) Upon good reasons being adduced therefor a business licence may, by endorsement of a licensing authority and on payment of a fee of five shillings, be transferred to another person.

9. A licensing authority, on being satisfied that a licence issued by him under this Ordinance has been lost or destroyed and on payment to him of a fee of five shillings, shall issue a duplicate licence to the licensee.

Issue of duplicate licences.

10. (1) Every business licence shall be exhibited in a prominent place in the premises to which it relates or if the business is not carried on in definite premises, such licence shall be kept at the place where the person carrying on the business usually resides.

Licences to be exhibited at place of business.

(2) Every professional licence shall be kept on the premises where the person practising the profession usually practices.

Licences to be produced for inspection.

(3) Every licence issued under this Ordinance shall be produced for inspection to any administrative or police officer, or licensing authority on reasonable notice being given by him.

Power of entry.

(4) Any administrative officer, police officer or licensing authority may enter any premises in respect of which a licence has been issued under this Ordinance, and may require to be furnished with such information as will enable him to determine whether or not the provisions of this Ordinance are being complied with.

(5) Any administrative officer, police officer or licensing authority may enter any premises in respect of which a licence has not been issued under this Ordinance in which he has good reason to suspect that there is carried on any profession, business or trade for which a licence is provided under this Ordinance, and may require to be furnished with any information he may deem to be necessary.

Books to be kept.

(6) Every person holding a licence under paragraph 2 of Schedule C of this Ordinance shall keep such books as will enable the Treasurer or his duly authorized representative to ascertain the nature of the trade carried on and the value of the goods on hand at any one time.

(7) In the case of a petty dealer licensed under paragraph 1 of Schedule C to this Ordinance, the nature of the trade carried on and the value of the goods on hand at any one time may be determined by any administrative officer, European police officer or the Treasurer or his duly authorized representative.

Offences.

- (8) Any person who—
- (a) contravenes the provisions of sub-section (1) or sub-section (2) of this section; or
 - (b) fails to produce his licence when notice has been given to him to do so under sub-section (3) of this section; or
 - (c) fails to furnish any information required from him under the provisions of sub-section (4) or sub-section (5) of this section; or
 - (d) fails to keep the books required to be kept under the provisions of sub-section (6) of this section; or

(e) obstructs or hinders any administrative or police officer or licensing authority in the exercise of his duties under this section, shall be guilty of an offence against this Ordinance.

11. Every licence holder, keeping a shop, office or other place of business or of practice under his licence shall exhibit at such place a signboard or name-plate bearing the name under which he practices or carries on business as shown on his licence.

12. (1) No person shall hawk goods in the Colony unless he holds a hawker's licence, for the time being in force authorizing him to do so, in the form set out in Schedule F to this Ordinance. **Hawkers' licences.**

(2) There shall be paid for a hawker's licence the fee of twenty-five shillings per month.

13. (1) No person shall peddle goods in the Colony unless he holds a pedlar's licence, for the time being in force authorizing him to do so, in the form set out in Schedule F to this Ordinance. **Pedlars' licences.**

(2) There shall be paid for a pedlar's licence a fee of ten shillings per month.

14. (1) Subject to the provisions of sub-section (2) of this section, where any person employs servants to hawk goods or to peddle goods on his account such person shall be liable to take out a licence and to pay the fees therefor for each such servant. **Servants of hawkers and pedlars.**

(2) A hawker or a pedlar shall not transfer his licence to any person: Provided that a servant may travel with his master's licence and trade for his master's benefit: And provided further that a separate licence shall be taken out for each servant if more than one is employed, as provided in sub-section (1) of this section.

(3) Every person required by this section to be provided with a hawker's licence or with a pedlar's licence shall carry the same with him and shall produce the same on the demand of any district officer or police officer.

(4) The provisions of sections 12, 13 and 14 of this Ordinance shall not apply to— **Exceptions.**

(a) any commercial traveller;

(b) any person hawking or peddling only goods in respect of which no licence under this Ordinance is required for the sale thereof in a store;

- (c) any person selling goods in any market legally established;
- (d) any person selling fish, vegetables, fruit, milk, victuals, firewood or newspapers;
- (e) any person selling religious or instructive literature to natives.

Issue of licences.

15. Licences shall be issued by the Treasurer or his duly authorized representative: Provided that a licence to practise as an advocate shall be issued by a registrar or deputy registrar of the Supreme Court.

Application for licences.

16. (1) Every application for a professional licence or a business licence shall be in the appropriate form contained in Schedule E to this Ordinance, and every licence issued under this Ordinance shall be in the appropriate form contained in Schedule F to this Ordinance.

(2) Every application for a professional licence or a business licence shall be signed by the person proposing to practise the profession, or by the owner, manager or authorized representative of the business: Provided that a business licence may be issued without written application if the applicant applies in person for the licence and the licensing authority is satisfied that the applicant has not sufficient knowledge of the English language to be able to apply in writing.

Exemptions.

17. (1) The following professions and businesses shall be exempt from the operation of this Ordinance:—

- (a) the business or trade of a planter, farmer, stock raiser, market gardener or dairyman disposing of his own produce, but not including a manufacturer of sugar or a manufacturer of tea or a manufacturer of roasted coffee;
- (b) a business for which a licence is taken out under any law for the time being in force relating to intoxicating liquor in respect of brewers or traders dealing solely in intoxicating liquors;
- (c) the business of mining under the authority of a prospecting right, an exclusive prospecting licence, a location or a mining lease granted under the Mining Ordinance, 1933, or the Oil Production Ordinance, 1924, or any legislation substituted therefor;

No. 61 of 1933.

No. 11 of 1924.

(d) brickmakers, butchers and bakers catering solely for, and domestic industries carried on by, natives, Somalis, Baluchis born in Africa, Malagasies and Comoro Islanders.

(2) The Governor may exempt any profession or business or any person practising any profession or carrying on any business from the operation of this Ordinance either generally or in any area, or he may reduce the fee payable under this Ordinance in respect of any business or profession or payable under this Ordinance by any person practising any profession or carrying on any business if, in his opinion, such exemption or reduction is desirable in the interests of the community or for any other reason which may seem to him to be sufficient.

Powers of
Governor
to exempt.

18. (1) The Governor may, from time to time, by order appoint the Treasurer and any other persons employed in the public service to be styled "the Licensing Commissioners" (in this Ordinance referred to as "the Commissioners") to superintend the licensing of professions and businesses under this Ordinance.

Licensing
Commissioners.

(2) The Commissioners may, from time to time, give general or specific directions to licensing authorities as to the performance of their duties, and may direct or authorize any question of doubt or difficulty in connection with their duties to be referred to the Commissioners for decision.

(3) Any direction or decision of the Commissioners shall be observed and given effect to by licensing authorities but shall not be binding on any court.

19. (1) Any licensee under this Ordinance who employs in his shop, office or other place of practice or of business any agent, clerk or other person shall be answerable for the acts of such agent, clerk or other person in so far as they concern the profession or business of such licensee in relation to this Ordinance; and if such agent, clerk or other person commits any act which is an offence against the provisions of this Ordinance, such licensee and his agent, clerk or other person shall be jointly and severally liable to the forfeitures, fines and penalties thereby incurred.

Licensee
responsible
for acts of
employee.

(2) The licensee shall not be allowed to plead as a bar to the proceedings taken against him that any such agent, clerk or other person who may have committed such offence did so without his authority, or was not acting in the capacity of an agent, clerk or other person employed.

- Rules.** **20.** The Governor in Council may make rules—
 (a) prescribing forms of application, forms or licences and any other forms required for the better carrying out of the provisions of this Ordinance;
 (b) amending or revoking the forms set out in Schedule E and Schedule F to this Ordinance;
 (c) generally for the better carrying out of the provisions of this Ordinance.
- Offences.** **21.** Any person who is guilty of an offence against this Ordinance or who acts in contravention of any of the provisions thereof or of any rules made thereunder shall, if no other penalty is imposed by this Ordinance or by any rules made thereunder, be liable on conviction for each offence to a fine not exceeding ten pounds and in default of payment to imprisonment for a term not exceeding one month.
- Duration.** **22.** This Ordinance shall continue in force until the thirty-first day of December, 1935, and shall then expire:
 Provided that such expiry shall not affect any liability, penalty or punishment incurred under this Ordinance or any legal proceeding or remedy in respect of any such liability, penalty or punishment but any such legal proceeding or remedy may be carried on or sought as if this Ordinance had not expired:
 Provided further 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.
- Repeal.** **23.** The Licensing Ordinance, 1933, is hereby repealed.

SCHEDULE A.

The licences described in this Schedule shall be known as "professional licences".

Every licence issued shall authorize the exercise of the profession described in the licence but shall not authorize the exercise of any other profession or the carrying on of any business for which a separate fee is prescribed under the Ordinance.

	<i>Per annum</i> <i>Sh.</i>
1. A licence to carry on the profession of an architect and/or quantity surveyor 	300
2. A licence to carry on the profession of an accountant and/or auditor 	300
3. A licence to carry on the profession of an advocate ...	300

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	<i>Per annum Sh.</i>
4. A licence to carry on the profession of a medical practitioner and/or a dentist or dental surgeon	300
5. A licence to carry on the profession of a consulting engineer	300
6. A licence to carry on the profession of a veterinary surgeon	300
7. A licence to carry on the profession of a land surveyor ...	300
8. A licence to carry on the profession of an assayer and/or geologist	300

SCHEDULE B.

The licences described in this Schedule shall be known as "business licences".

Every licence issued shall authorize the carrying on of the business described in such licence but shall not, save as otherwise specifically provided in a licence issued under item 6 of this Schedule authorize the exercise of any profession or the carrying on of any other business for which a separate fee is prescribed under the Ordinance.

	<i>Per annum Sh.</i>
1. A licence to carry on the business of a house, land and estate agent	200
2. A licence to carry on the business of an estate managing agent and/or secretary (not required to be taken out by any person holding a professional licence as an accountant and/or auditor)	100
3. A licence to carry on the business of an assessor or valuator (not required to be taken out by any person holding a professional licence as a land surveyor, or as an architect and/or quantity surveyor)	100
4. A licence to carry on the business of a bookkeeper (not required to be taken out by any person holding a professional licence as an accountant and/or auditor) ...	100
5. A licence to carry on the business of a stock and share broker	200
6. A licence to carry on any or all of the businesses described in this Schedule	300

SCHEDULE C.

The licences described in this Schedule shall be known as "business licences".

Every licence issued shall authorize the carrying on of the business described in such licence but shall not, save as otherwise specifically provided in a licence issued under item 7 of this Schedule, authorize the exercise of any profession or the carrying on of any other business for which a separate fee is prescribed under the Ordinance.

	<i>Per annum Sh.</i>
1. A licence to conduct the business of a petty dealer : —	
For each place of business where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £100—	
(a) in a municipality, township or trading centre	30
(b) elsewhere	10
2. A licence to conduct the business of a trader :—	
For each place of business—	
(a) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £300	75
(b) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £1,000	300
(c) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £2,000	400
(d) where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £5,000	500
(e) where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £10,000	600
(f) where the value of the goods on hand may at any one time during the period of the validity of the licence exceed £10,000	1,000
3. (1) A licence to carry on the business of a manufacturer with the right to purchase raw materials necessary to the business of a manufacturer and to sell the goods manufactured by him :—	
For each place of business where the gross receipts derived from such manufacturing business during the period of twelve months immediately preceding the date upon which liability to take out the licence arose—	
(a) did not exceed £300	30
(b) exceeded £300 but did not exceed £2,500	100
(c) exceeded £2,500 but did not exceed £5,000	300
(d) exceeded £5,000	750

Provided that, in cases where trade may not have been carried on for the period of twelve months immediately preceding the date upon which the liability to

*Per annum
Sh.*

take out a licence arose, the fee shall be based upon the gross receipts estimated to be derived from the trade during the period of twelve months immediately following the date upon which the liability to take out a licence arose.

- (2) A person carrying on the business of a maize miller shall not be deemed to be carrying on the business of a manufacturer for the purpose of this item.
- | | |
|---|-------|
| 4. A licence to carry on the business of a commission agent and/or manufacturer's representative | 300 |
| 5. A licence to carry on the business of an exchange banker including branches | 1,000 |
| 6. A licence to carry on the business of a clearing and forwarding agent | 100 |
| 7. A licence to carry on any or all of the businesses described in this Schedule and in Schedule B ... | 1,200 |

For the purposes of this Schedule the expression "goods on hand" shall exclude—

- (a) domestic produce not for sale direct to the consumer; and
- (b) any stocks on hand of liquor held by any person who is the holder of a licence, for the time being in force, issued to him in respect of the sale of such liquor under the Liquor Ordinance, 1934, or under any law amending or replacing the same.

No. 62 of 1934.

SCHEDULE D.

The licences described in this Schedule shall be known as "business licences".

Every licence issued shall authorize the carrying on of the business described in such licence, but shall not authorize the exercise of any profession or the carrying on of any other business for which a separate fee is prescribed under this Ordinance.

*Per annum
Sh.*

- | | |
|---|-------|
| 1. A licence to carry on the business of a banker :— | |
| For each principal or only place of business | 4,000 |
| For each branch | 500 |
| 2. A licence to carry on the business of an oil company (including branches) | 4,000 |

*Per annum
Sh.*

3. A licence to carry on the business of an electric light distributor for gain, unless specifically exempted by the Governor in Council :—	
For each area of distribution	2,500
Provided that the areas of distribution covered by the following distributing licences shall, for the purposes of this item, be deemed to be one area of distribution—	
No. 2 dated the 24th March, 1922.	
No. 5 dated the 20th February, 1926.	
No. 6 dated the 20th May, 1926.	
No. 7 dated the 2nd October, 1930.	
4. A licence to carry on the business of a shipping company or agency (including branches, agencies or sub-agencies)	1,000
5. A licence to carry on the business of stevedoring and lighterage	1,000
6. A licence to carry on the business of an insurance company or insurance underwriters payable by each separate insurance company or separate group of underwriters operating through a head office, branch office, agency or sub-agency :—	
Life (including bond investment and industrial assurance)—	
The receiving or collecting of life assurance <u>renewal</u> premiums in respect of life assurance contracts entered into and in force in a place outside the Colony and which by the nature of the contract it is obligatory on the company or underwriters to continue to receive until such contract expires, becomes void or otherwise determines, shall not, for the purposes of this Schedule be deemed to be carrying on the business of insurance	200
Fire, or other perils written in conjunction with fire ...	200
Marine (including transit insurance of any kind other than personal baggage insurance)	200
Accident, including burglary, personal baggage, personal accident and sickness, employers' liability and third-party risks, guaranteed live stock, motor and plate glass	200

	<i>Per annum Sh.</i>
Insurance business generally	600
7. A licence to carry on the business of a turf commission agent or turf accountant :—	
For each individual carrying on such business whether alone or in partnership with another person or persons or as the director of a company	500
8. A licence to carry on the business of a coffee curer (not required by a farmer curing only his own coffee for export purposes, or by a coffee curer who does not cure more than 200 tons of coffee per annum)... ..	500
9. A licence to carry on the business of transporting passengers and goods by air	200
10. A licence to carry on the business of a wood fuel contractor	200
11. A licence to carry on the business of a ballast contractor	200
12. A licence to carry on the business of a tourist agency ...	100
13. A licence to carry on the sole business of a safari outfitter	100
14. A licence to carry on the sole business of a trophy dealer and taxidermist (the holder of this licence shall not be required to take out a licence as a petty dealer or trader under Schedule C merely in respect of his business as a trophy dealer and taxidermist)	100
15. A licence to carry on the business of a newspaper publisher :—	
(a) for the publication for twelve months of one daily edition of a newspaper	200
(b) for the publication for twelve months of a newspaper or periodical other than a daily newspaper	100
16. A licence to carry on the business of an hotel, boarding and/or lodging house :—	
(1) With twenty or more bed or sleeping rooms ...	200
(2) With not less than six and not more than nineteen bed or sleeping rooms—	

	<i>Per annum Sh.</i>
(a) in respect of premises situate in or within three miles of the boundaries of Nairobi Municipality or Mombasa	150
(b) in respect of premises situate in or within three miles of the boundaries of Nakuru Municipality, Eldoret Municipality, Kitale Township or Kisumu Township ...	100
(c) in respect of premises situated elsewhere	50
(3) With not less than two and not more than five bed or sleeping rooms	25
17. A licence to carry on the business of a restaurant keeper (not required in respect of a restaurant which may be carried on in connection with a business of an hotel, boarding and/or lodging house licensed as such under this Ordinance or in respect of any business which in the opinion of the Licensing Commissioners is a tea-room) :—	
For each place of business—	
(a) European	100
(b) Non-European—in a municipality, township or trading centre	10
18. A licence to carry on the business of a builder, or building contractor	300
19. A licence to carry on the business of a brickworks ...	200
21. A licence to carry on the business of a dry cleaner and/or laundry man (not including a dhobi working single-handed)	100
21. A licence to carry on the business of a baker (the holder of this licence shall not be required to take out a licence as a petty dealer or a trader under Schedule C merely in respect of his business as a baker)	100
22. A licence to carry on the business of a vulcanizer ...	50
23. A licence to carry on the business of a photographer ...	50
24. A licence to carry on the business of an employment bureau	30
25. A licence to carry on the business of a dealer in stone or sand	30
26. A licence to carry on the business of a commercial traveller for three months	400

SCHEDULE E.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

FORM OF APPLICATION FOR A LICENCE TO CARRY ON A BUSINESS.

(Schedule B, Schedule C and Schedule D of the Ordinance.)

A separate form must be completed in respect of each licence applied for.

- 1. Name under which the business is to be carried on
- 2. Full address where the business is to be carried on
- 3. Name of proprietor, partner or owning company
- 4. Full description of the business for which a licence is required

N.B.—Before completing this section applicants are advised to refer to the description of businesses in the relative Schedules.

- 5. State number and date of licence previously held; or state date of commencing business
- 6. State period for which licence is required

N.B.—In any case where the annual fee is not less than Sh. 100 a licence may be issued for six months with effect from the 1st January the fee payable being half the amount of the annual fee.

- 7. Is your stock insured against fire
- 8. If so, for what amount
- 9. Name of Insurance Company

I hereby certify that the information given in this application is true and correct.

Signature of applicant.....

Date..... Designation.....

Declaration to be completed by an applicant for a licence to carry on the business of an hotel, boarding and/or lodging house.

I hereby certify that the number of bed or sleeping rooms which I have set apart and furnished for letting is not more than

Date..... Signature.....

Declaration to be completed by an applicant for a licence to carry on business as a petty dealer, or as a trader (section 1 and section 2 of Schedule C).

In respect of the licence for which I make application, I hereby certify that the value of the goods on hand will not at any time during the period of validity of the said licence exceed £.....

Date..... Signature.....

Declaration to be completed by an applicant for a licence to carry on business as a manufacturer (section 3 of Schedule C).

In respect of the licence for which I make applicaiton, I hereby certify that the gross receipts derived from the business during the twelve months immediately preceding the 2nd of January, did not exceed £.....

Date..... Signature.....

FOR OFFICIAL USE ONLY.

Licence No. Date..... Fee.....
Issued in the name of
in respect of premises situate
under section of Schedule.....
Station..... Licensing Authority.....
Registered.....

SCHEDULE E.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

Form of application for licence to practise a profession (Schedule A).

A separate form must be completed in respect of each licence applied for.

Full name of applicant

Description of the profession for which a licence is required

Business name under which the profession will be practised, i.e. pro-

prietor, partner or owning company

Full address where profession will be practised

Date..... Signature.....

FOR OFFICIAL USE ONLY.

Licence No. Date..... Fee.....
 Issued in the name of
 in respect of premises situate at
 under section
 Date..... Licensing Authority.....

SCHEDULE F.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

BUSINESS LICENCE.

Station.....
 Licence is hereby granted to
 of (address)
 to carry on the of
 on premises situated at
 This licence expires on the day of, 19.....
 Fee paid (in words) (Sh.)
 Date..... Licensing Authority.....

SCHEDULE F.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

HAWKER'S LICENCE

Station.....
 Licence is hereby granted to
 to hawk goods in the Colony for a period
 of month/s.
 This licence expires on the day of, 19.....
 Fee paid (in words) (Sh.)
 Date..... Licensing Authority.....

SCHEDULE F.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

PROFESSIONAL LICENCE.

Station.....

Licence is hereby granted to
of (address)
to practice the profession of

This licence expires on the day of, 19.....

Fee paid (in words) (Sh.)

Date..... Licensing Authority.....

SCHEDULE F.

COLONY AND PROTECTORATE OF KENYA.

The Licensing Ordinance, 1934.

PEDLAR'S LICENCE.

Station.....

Licence is hereby granted to
..... to peddle goods in the Colony for a period
of month/s.

This licence expires on the day of, 19.....

Fee paid (in words) (Sh.)

Date..... Licensing Authority.....

No. LXIV of 1934

Assented to in His Majesty's name this thirty-first day of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

An Ordinance to Establish a Provident Fund for Members of the Local Asian Civil Service of the Colony and to Provide for Contributions to such Fund by Members of the said Service and by Government.

By Notice

Date of commencement

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

1. This Ordinance may be cited as the Asian Civil Service Provident Fund Ordinance, 1934, and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Short title and commencement

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

Interpretation.

“common service” means a service (common to the Colony and to the Tanganyika Territory or the Uganda Protectorate or to both the Tanganyika Territory and the Uganda Protectorate) part of the cost of which is reimbursed to the Colony by one or both of such dependencies;

“contributor” means a person who has been appointed under a Letter of Permanent Appointment to be a member of the Asian Local Civil Service and who is not prohibited from being a contributor under the provisions of section 5 of this Ordinance, or who, if so prohibited, has been exempted by the Governor under section 13 of this Ordinance from such provisions of section 5 of this Ordinance as will enable such person to become a contributor;

“fund” means the Provident Fund established under this Ordinance;

“interest” shall include compound interest;

“salary” means the substantive salary payable to a contributor, but does not include any allowance or other receipts or emoluments whatsoever;

“Service” includes service under the Government of the Colony and service in a common service and such other service as the Governor may by notice in the Gazette direct to be service for the purposes of this Ordinance, if followed without break of service by service in the Asian Local Civil Service.

**Establishment
of provident
fund.**

3. (1) From the date of commencement of this Ordinance there shall be established a fund to be known as “the Asian Civil Service Provident Fund”, which shall consist of—

- (a) contributions made by contributors;
- (b) amounts payable from general revenue in accordance with the provisions of section 6 of this Ordinance.

(2) All amounts contributed or paid to the fund shall be lodged with the Treasurer to the credit of the fund in a separate deposit account. The Treasurer shall, so far as may be practicable, invest such amounts on account of the Colonial Government in trustee stocks or in securities approved by the Governor in Council.

(3) The Treasurer shall submit to the Governor as soon as possible after the thirty-first day of December in each year a full statement showing the working of the fund and all claims thereon, and containing full particulars of all transactions connected with the working of the fund.

**Contributions
to fund from
contributors.**

4. Subject to the provisions of section 5 of this Ordinance—

- (1) every male contributor shall, as from the date of the commencement of this Ordinance, or in the case of a male officer who is appointed to the Asian Local Civil Service after that date or who becomes eligible to be a contributor after that date, as from the date upon which such officer becomes eligible to be a contributor, make contributions to the fund at the rate of five per centum per annum of his salary;
- (2) every female contributor shall, as from the date of the commencement of this Ordinance, or in the case of a female officer who is appointed to the Asian Local Civil Service after that date or who becomes eligible to be a contributor after that date, as from the date upon which such officer becomes eligible to be a contributor, make contributions to the fund at the rate of seven and one-half per centum per annum of her salary;

(3) such contributions shall be deducted monthly by the Treasurer from the salary payable to the contributor, and on being so deducted by the Treasurer shall be considered as paid into the fund on the last day of the month for which the salary was due and shall bear interest as from the first day of the month next following;

(4) a contributor shall, except when on leave prior to retirement or to the termination of his services, make contributions to the fund while on leave of absence whether on full salary or on half salary; and while on leave on half salary such contributions shall be made as if the contributor were on leave of absence on full salary. A contributor may elect to contribute in respect of any period of leave of absence without pay, and any such contributions if paid otherwise than by deduction from salary shall bear interest as from the first day of the month next following the month in which such contributions are received into the fund.

5. (1) No contributions to the fund shall be made by any officer— Who are not contributors.

(a) who has completed less than twelve months continuous service; or

(b) who is under the age of seventeen years; or

(c) who is a learner, or an apprentice, or who is on probation; or

(d) whose age on appointment is forty-five years or over; or

(e) who has attained the age of fifty years; or

(f) whose salary amounts to less than ninety pounds per annum; or

(g) who is pensionable under the Non-European Officers' Pensions Ordinance, 1932, or is otherwise eligible for pension under any other law of the Colony; or No. 53 of 1934.

(h) who is a married woman.

(2) In calculating an officer's service under paragraph (a) of sub-section (1) of this section any service under paragraphs (b), (c) or (f) of that sub-section shall be taken into account.

Contributions
to fund from
public revenue.

6. From and after the commencement of this Ordinance there shall be paid to the fund from the general revenue of the Colony to the credit of each contributor—

- (a) on the 30th June, and 31st December in each year a contribution in accordance with the scale laid down in the Schedule to this Ordinance;
- (b) in the case of contributors who, prior to the date of commencement of this Ordinance, were in the service and who become contributors without break of service, such sum as would have been paid to the fund from the general revenue in respect of each such contributor under paragraph (a) of this section if this Ordinance had been in force at the date on which such contributors first joined the service;
- (c) on the 31st day of December in each year interest calculated on the amount standing in the fund to the credit of each contributor on the last day of each month during the period of twelve months immediately preceding. Such interest shall be at the rate of not less than three per centum per annum, to be fixed by order of the Governor in Council for the first year of the operation of this Ordinance within three months from the date of commencement of this Ordinance and thereafter not later than the 31st day of March in each year, and shall on the 31st day of December in each year be added to and become part of the principal:

Provided that such interest shall not be allowed for broken periods of a month:

Provided further that when a contributor's account is closed during the course of any year such interest shall be calculated to the end of the month preceding the date on which the account is so closed.

Rights of
contributors
against fund.

7. (1) Save as is provided in paragraph (c) of sub-section (3) of this section, a contributor who retires or resigns from or is removed on grounds other than misconduct from the service shall, on such retirement, resignation, or removal, as the case may be, be paid from the fund a sum equal to the aggregate of the contributions which he has made to the fund together with the interest thereon, and shall in addition be

entitled to any contributions made to the fund from general revenue under section 6 of this Ordinance on his behalf, together with interest thereon :

Provided that a contributor who leaves the service before he has completed four years' continuous service as a contributor, unless he so leaves the service—

- (a) on the abolition of his office;
- (b) on compulsory retirement for the purpose of facilitating improvement in the organization of the Department to which he belongs, by which greater efficiency or economy can be effected;
- (c) on medical evidence to the satisfaction of the Governor that he is incapable by reason of some infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;
- (d) in the case of a male contributor on attaining the age of fifty years; or
- (e) in the case of a female contributor, for the purpose of getting married or on attaining the age of forty-five years,

shall have no claim to receive from the fund a greater sum than the aggregate of the contributions made by him, with interest thereon.

(2) A contributor who, having been a contributor to the fund, is subsequently appointed to a pensionable office without break of service, shall be paid from the fund the aggregate amount of the contributions made by him to the fund with interest thereon but shall not receive any part of the contributions made from general revenue on his behalf or interest thereon. The amount of such contributions from general revenue, with interest thereon, shall be repaid to general revenue.

(3) (a) A female contributor who marries while in the service and who on the date of such marriage has completed four or more years' continuous service shall, on submitting to the Treasurer, within three months of the date of her marriage, satisfactory proof of such marriage, be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 of this Ordinance on her behalf, together with interest thereon.

(b) A female contributor who marries while in the service and who on the date of her marriage has completed less than four years' continuous service shall, on submitting to the Treasurer within three months of the date of her marriage satisfactory proof of such marriage, be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf, together with interest thereon.

(c) A female contributor who resigns from the service for the purpose of getting married and who at the date of ceasing to be a contributor has completed less than four years' continuous service shall be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, on submitting to the Treasurer within six months after the date on which she ceased to be a contributor or within such longer period as the Treasurer may, in his discretion, deem necessary, satisfactory proof of her marriage, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf, together with interest thereon.

(d) A female contributor who marries while in the service shall cease to be a contributor to the fund with effect from the end of the month immediately preceding her marriage.

(4) On the death of a contributor there shall be paid from the fund to his legal personal representative a sum equal to the aggregate contributions made to the fund by the contributor with interest thereon together with any contributions made from general revenue under section 6 of this Ordinance on his behalf together with interest thereon :

Provided that the Treasurer may make advance not exceeding thirty pounds in any one case to meet the expenses of the funeral of the deceased, or to give immediate relief to the widow or children or other dependants of the deceased, if in the opinion of the Treasurer such relief is required; and any such payment made by the Treasurer shall be valid and effectual against any demand made upon the Treasurer or the Government by any other person in connection with such payment.

- (5) (a) On the death of a contributor; or
 (b) on the termination of the service of a contributor, whether by retirement, transfer to the public service of another dependency, or otherwise; or
 (c) on the marriage of a female contributor,

his account shall be credited with interest up to the end of the month previous to the date of such death, termination, retirement, transfer, or marriage, and a notice stating the amount standing to the credit of the contributor shall be given to the person entitled to receive payment or to the contributor, as the case may be.

8. If a contributor is dismissed from the service for misconduct or if he shall leave the service otherwise than in accordance with the regulations for the time being in force governing his appointment in the service, the Governor may withhold all or any part of the contributions made to the fund from general revenue or the interest thereon. Dismissal of contributor.

- 9.** Any sums due to Government by a contributor— Sums due to Government.
 (a) on his death, or
 (b) on the termination of his services, whether by retirement, transfer to the public service of another dependency or otherwise, or
 (c) on the appointment of the contributor to a pensionable office,

may be deducted from the amount then standing to his credit in the fund.

10. (1) In addition to any payment from the fund to which a contributor may have a claim under the foregoing provisions of this Ordinance it shall be lawful for the Governor in Council to grant from the public revenues of the Colony to a contributor who retires from continuous satisfactory service of not less than fifteen years a gratuity not exceeding the amount of one week's salary, based on the salary drawn at the date of retirement, for each completed year of service. Gratuities to contributors.

Provided that if a contributor is retired in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organization of the Department to which he belongs, a gratuity may be granted after continuous satisfactory service of not less than seven years.

(2) The provisions of this section shall not apply to a contributor who is eligible for a gratuity under Regulation 12 of the Schedule to the Non-European Officers Pensions Ordinance, 1932, or under the Superannuation Acts.

Payment from
fund not
assignable.

11. No moneys while in the fund and no rights acquired by a contributor under this Ordinance shall, while such contributor is in the service, be assignable or transferable or liable to be attached, sequestrated, or levied upon or in respect of any debt or claim whatsoever other than a debt due to the Government of the Colony.

Power to make
regulations.

12. The Governor in Council may make regulations for the management of the fund and generally for carrying into effect the provisions of this Ordinance.

13. The Governor may—

- (a) by notice in the Gazette exclude any person or class of persons from the operation of this Ordinance;
- (b) exempt any person or class of persons from all or any of the provisions of this Ordinance.

SCHEDULE.

CONTRIBUTIONS TO BE MADE FROM GENERAL REVENUE ON THE 30TH DAY OF JUNE AND THE 31ST DAY OF DECEMBER IN EACH YEAR.

(Section 6 (a) of the Ordinance.)

MALE CONTRIBUTORS.

- | | |
|---|--|
| A.—In respect of continuous service up to and including the tenth year: | A sum equal to the aggregate of the contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment. |
| B.—In respect of continuous service after the tenth year of service and up to and including the twentieth year: | A sum equal to 150 per centum of the aggregate of the contributions made by the contributor of the fund during the period of six months immediately preceding the date of payment. |
| C.—In respect of continuous service after the twentieth year: | A sum equal to twice the aggregate contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment. |

Provided in cases B and C that, if the length of continuous service of a contributor reaches ten or twenty years, as the case may be, during the course of the period of six months immediately preceding the date of the next payment, the higher rate of contribution to be made from general revenue shall apply only to contributions made by the contributor in respect of service subsequent to the completion of ten or twenty years' continuous service, as the case may be.

FEMALE CONTRIBUTORS.

An amount equal to the aggregate of the contributions made by the contributor to the fund during the period of six months immediately preceding the date of payment.

No. LXV of 1934

Assented to in His Majesty's name this thirty-first day of December, 1934.

J. BYRNE,
Governor.

[31ST DECEMBER, 1934.] Date of assent.

An Ordinance to Amend the European Civil Service Provident Fund Ordinance, 1934.

31st December, 1934

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 European Civil Service Provident Fund (Amendment) Ordinance, 1934, and shall be read as one with the European Civil Service Provident Fund Ordinance, 1934, hereinafter referred to as the Principal Ordinance. Short title.
No. 27 of 1934.

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

- (1) by deleting the definition of "contributor" which occurs therein and substituting therefor the following :—

"contributor" means a person who has been appointed under a Letter of Permanent Appointment to be a member of the European Local Civil Service and who is not prohibited from being a contributor under the provisions of section 5 of this Ordinance, or who, if so prohibited, has been exempted by the Governor under section 10 of this Ordinance from such provisions of section 5 of this Ordinance as will enable such person to become a contributor ;

- (2) by inserting the following new definition :—

"Service" includes service under the Government of the Colony and service in a common service and such other service as the Governor may by notice in the Gazette direct to be service for the purposes of this Ordinance, if followed without break of service by service in the European Local Civil Service.

Repeal and replacement of sections 4 (1) and 4 (2) of the Principal Ordinance.

3. Sub-sections (1) and (2) of section 4 of the Principal Ordinance are hereby repealed and the following are substituted therefor :—

- “(1) every male contributor shall, as from the date of the commencement of this Ordinance, or in the case of a male officer who is appointed to the European Local Civil Service after that date or who becomes eligible to be a contributor after that date, as from the date upon which such officer becomes eligible to be a contributor, make contributions to the fund at the rate of five per centum per annum of his salary ;
- (2) every female contributor shall, as from the date of the commencement of this Ordinance, or in the case of a female officer who is appointed to the European Local Civil Service after that date or who becomes eligible to be a contributor after that date, as from the date upon which such officer becomes eligible to be a contributor, make contributions to the fund at the rate of seven and one-half per centum per annum of her salary ;”

Repeal and replacement of section 5 of the Principal Ordinance.

Who are not contributors.

4. Section 5 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

- “5. (1) No contributions to the fund shall be made by an officer—
- (a) who has completed less than twelve months' continuous service ; or
- (b) who is a learner, or an apprentice, or who is on probation ; or
- (c) whose salary amounts to less than one hundred and fifty pounds per annum ; or
- (d) who is pensionable under the European Officers' Pensions Ordinance, 1927, or is otherwise eligible for pension under any other law of the Colony ; or
- (e) who is a married woman ; or
- (f) who is under the age of eighteen years ; or
- (g) whose age on appointment to the service is fifty years or over ; or
- (h) who has attained the age of fifty-five years.

(2) In calculating an officer's service under paragraph (a) of sub-section (1) of this section any service under paragraphs (b), (c) or (f) of that sub-section shall be taken into account."

5. Paragraph (b) of section 6 of the Principal Ordinance is hereby amended by substituting the words "who become" for the words "on the said date became" which occur in the third line of the paragraph.

Amendment of section 6 (b) of the Principal Ordinance.

6. Section 7 of the Principal Ordinance is hereby amended—

Amendment of section 7 of the Principal Ordinance.

(1) by deleting the words "A contributor" which occur in the first line of sub-section (1) of the section and substituting therefor the following words :—

"Save as provided in paragraph (c) of sub-section (3) of this section, a contributor";

(2) by deleting paragraph (e) of sub-section (1) of the section and substituting therefor the following paragraph :—

"(e) in the case of a female contributor, for the purpose of getting married or on attaining the age of fifty years,";

(3) by deleting sub-section (3) of the section and substituting therefor the following :—

(3) (a) A female contributor who marries while in the service and who on the date of such marriage has completed four or more years' continuous service shall, on submitting to the Treasurer, within three months of the date of her marriage, satisfactory proof of such marriage, be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 of this Ordinance on her behalf, together with interest thereon.

(b) A female contributor who marries while in the service and who on the date of her marriage has completed less than four years' continuous service shall, on submitting to the Treasurer within three months of the date of her marriage satisfactory proof of such marriage, be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund,

together with interest thereon, and shall, in addition, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf, together with interest thereon.

(c) A female contributor who resigns from the service for the purpose of getting married and who at the date of ceasing to be a contributor has completed less than four years' continuous service shall be paid from the fund a sum equal to the aggregate of the contributions which she has made to the fund, together with interest thereon, and shall, in addition, on submitting to the Treasurer within six months after the date on which she ceased to be a contributor, or within such longer period as the Treasurer may, in his discretion, deem necessary, satisfactory proof of her marriage, be entitled to any contributions made to the fund from general revenue under section 6 (a) of this Ordinance on her behalf, together with interest thereon.

(d) A female contributor who marries while in the service shall cease to be a contributor to the fund with effect from the end of the month immediately preceding her marriage."

Repeal and
replacement of
section 10 of
the Principal
Ordinance.

7. Section 10 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

"10. The Governor may—

- (a) by notice in the Gazette exclude any person or class of persons from the operation of this Ordinance;
- (b) exempt any person or class of persons from all or any of the provisions of this Ordinance."

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NOTE.—The Ordinances marked * have not yet been brought into operation. In such cases the replaced Ordinances, which are not shown here, are still in force.

Amendments made by the Revised Edition of the Laws (Operation) Ordinance, 1926, to various Ordinances in the Revised Edition are not shown on this list.