

SENIOR COMMISSIONER,
NYAKEL.



COLONY AND PROTECTORATE OF KENYA.

ORDINANCES

ENACTED DURING THE YEAR

1926.

VOL. V (NEW SERIES)

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COLONY AND PROTECTORATE OF KENYA.

**AN ORDINANCE TO CONSOLIDATE AND AMEND
THE LAW RELATING TO BANKRUPTCY.**

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Meetings of creditors.

SECOND SCHEDULE.

Proof of debts.

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Vide Bankruptcy Ordinance

Nº 32 of 1930. O.G. 13.9.30,

p. 2153. —

An Ordinance to Consolidate and Amend the Law *No. 1 of 1926.*
Relating to Bankruptcy.

[12TH JANUARY, 1926.]

Date of
commencement.

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

PART I.

Preliminary.

1. This Ordinance may be cited as “ the Bankruptcy *Short title.*
Ordinance, 1925,” and shall come into force on such date as
the Governor shall by notice in the Gazette declare.

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

“ Available act of bankruptcy ” means any act of bank-
ruptcy available for a bankruptcy petition at the date of the
presentation of the petition on which the receiving order is
made;

“ Colony ” includes the Protectorate;

“ The court ” means the Supreme Court of Kenya;

“ Debt provable in bankruptcy ” or “ provable debt ”
includes any debt or liability by this Ordinance made provable
in bankruptcy;

“ Gazetted ” means published in the Gazette;

“ General rules ” include forms;

“ Goods ” includes all chattels personal;

“ Local bank ” means any bank in the Colony;

“ Ordinary resolution ” means a resolution decided by a
majority in value of the creditors present, personally or by
proxy, at a meeting of creditors and voting on the resolution;

“ Property ” includes money, goods, things in action,
land, and every description of property whether movable or
immovable and whether situate in the Colony or elsewhere;
also obligations, easements, and every description of estate,
interest, and profit, present or future, vested or contingent,
arising out of or incident to property as above defined;

“ Resolution ” means ordinary resolution ;

“ Secured creditor ” means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor ;

“ Sheriff ” includes any person charged with the execution of any process ;

“ Special resolution ” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution ;

“ Trustee ” means the trustee in bankruptcy of a debtor's estate.

PART II.

Proceedings from Act of Bankruptcy to Discharge.

ACTS OF BANKRUPTCY.

Acts of
bankruptcy.

3. (1) A debtor commits an act of bankruptcy in each of the following cases :—

(a) If in the Colony or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ;

(b) If in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof ;

(c) If in the Colony or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other Ordinance be void as a fraudulent preference if he were adjudged bankrupt ;

(d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of the Colony, or being out of the Colony remains out of the Colony, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house ;

(e) If execution against him has been levied by seizure of his goods in any civil proceeding in any court, and the goods have been either sold or held by the sheriff for twenty-one days :

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

(f) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;

(g) If a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has served on him in the Colony, or, by leave of the court, elsewhere, a bankruptcy notice under this Ordinance, and he does not within seven days after service of the notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained;

For the purposes of this paragraph and of section 4 of this Ordinance, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order;

(h) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Ordinance, the expression "a debtor" unless the context otherwise implies, includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him:—

(a) Was personally present in the Colony; or

(b) Ordinarily resided or had a place of residence in the Colony; or

No. I.*Bankruptcy***1926.**

(c) Was carrying on business in the Colony, personally, or by means of an agent or manager; or

(d) Was a member of a firm or partnership which carried on business in the Colony.

Bankruptcy
notices.

4. A bankruptcy notice under this Ordinance shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner :—

Provided that a bankruptcy notice :—

(i) May specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;

(ii) Shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

RECEIVING ORDER.

Jurisdiction to
make receiving
order.

5. Subject to the conditions hereinafter specified if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Ordinance called a receiving order, for the protection of the estate.

Conditions on
which creditor
may petition.

6. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless :—

(a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds, and

(b) The debt is a liquidated sum, payable either immediately or at some certain future time, and

(c) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and

(d) The debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, or has carried on business, in the Colony, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in the Colony by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by any law for the time being in force relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

7. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

Proceedings and order on creditor's petition.

(2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he

is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

Debtor's petition
and order
thereon.

8. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the court.

Effect of
receiving order.

9. (1) On the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

10. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to
appoint interim
receiver.

11. (1) The court may, at any time after the presentation of a bankruptcy petition, stay any action execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Power to stay
pending
proceedings.

(2) Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding.

12. (1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

Power to
appoint special
manager.

(2) The special manager shall give security and account in such manner as the official receiver may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

Advertisement
of receiving
order.

Power to rescind
receiving order
in certain cases.

14. If in any case where a receiving order has been made on a bankruptcy petition it appears to the court, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in some place elsewhere than in the Colony, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the law relating to bankruptcy in such place, the court, after such inquiry as it may think fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the court may think fit.

PROCEEDINGS CONSEQUENT ON ORDER.

First and other
meetings of
creditors.

15. (1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the first schedule to this Ordinance shall be observed.

Debtor's state-
ment of affairs.

16. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely :—

(i) If the order is made on the petition of the debtor, within three days from the date of the order ;

(ii) If the order is made on the petition of a creditor, within seven days from the date of the order ;

but the court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

PUBLIC EXAMINATION OF THE DEBTOR.

17. (1) Where the court makes a receiving order, it shall, save as in this Ordinance provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

Public examination of debtor.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver shall take part in the examination of the debtor, and for the purpose thereof may employ an advocate if he so desires.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Ordinance provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner and at such place as to the court seems expedient.

COMPOSITION OR SCHEME OF ARRANGEMENT.

Compositions
and schemes of
arrangement.

18. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any surties or securities proposed.

(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal, with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

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(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from the Colony.

(8) The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor..

(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge, were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

(12) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor or provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(14) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done, under or in pursuance of the composition or scheme.

Where a debtor is adjudged bankrupt under this subsection any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 27 and Part V of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" include respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part III of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication" as in the last preceding subsection.

(19) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

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(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt.

19. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Effect of
composition or
scheme.

ADJUDICATION OF BANKRUPTCY.

20. (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting, or any adjournment thereof by ordinary resolution, resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor, or such further time as the court may allow, the court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his creditors, and shall vest in a trustee.

Adjudication of
bankruptcy where
composition not
accepted or
approved.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Ordinance, be the date of the adjudication.

21. (1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned

Appointment of
trustee.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the court, and the court, if satisfied with the security, shall certify that his appointment has been duly made, unless the court objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt, or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) The appointment of a trustee shall take effect as from the date of the certificate.

(4) The official receiver shall not, save as by this Ordinance provided, be the trustee of the bankrupt's property.

(5) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the court, and thereupon the court shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

(6) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the court.

(7) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of
inspection.

22. (1) The creditors qualified to vote may, at their first or any subsequent meeting by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications :—

(a) That of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(b) That of being a person to whom a creditor intends to give a general proxy or general power of attorney : Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

(6) If a member of the committee becomes bankrupt or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor, or other person eligible as above, to fill the vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the court on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication.

23. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection all debts, provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankruptcy.

CONTROL OVER PERSON AND PROPERTY OF DEBTOR.

24. (1) Every debtor against whom a receiving order is made, shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

Duties of debtor as to discovery and realisation of property.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meeting of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyance, deeds, and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager or trustee, or may be prescribed by general rules, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

25. (1) The court may, by warrant addressed to any police officer or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances :—

Arrest of debtor under certain circumstances.

(a) If, after a bankruptcy notice has been issued under this Ordinance, or after presentation of a bankruptcy petition by or against him, it appears to the court that

there is probable reason for believing that he has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him ;

(b) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy ;

(c) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee ;

(d) If, without good cause shown, he fails to attend any examination ordered by the court :

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest is served with such bankruptcy notice.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Re-direction of
debtor's letters.

26. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, post letters, telegrams, and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

27. (1) The court may on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

Inquiry as to
debtor's conduct
dealings and
property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such documents, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

(4) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(5) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

(6) The court, may, if it thinks fit, order that any person who, if in the Colony would be liable to be brought before it under this section shall be examined in any other place out of the Colony.

Discharge of
bankrupt.

28. (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules under this Ordinance otherwise directs, be heard in open court.

(2) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property :

Provided that the court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Ordinance, or any other offence connected with his bankruptcy, unless for special reasons the court otherwise determines, and shall, on proof of any of the facts hereinafter mentioned, either :—

(i) Refuse the discharge ; or

(ii) Suspend the discharge for a period of not less than two years : provided that the period may be less than two years, if the only fact proved of those hereinafter mentioned is that his assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities ; or

(iii) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors ; or

(iv) Require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property

of the bankrupt in such manner and subject to such conditions as the court may direct ; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts :

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3) The facts hereinbefore referred to are :—

(a) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible ;

(b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy ;

(c) That the bankrupt has continued to trade after knowing himself to be insolvent ;

(d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it ;

(e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;

(f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;

(g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(h) That the bankrupt has, within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(i) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(j) That the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities;

(k) That the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;

(l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) With a view to removing any legal disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such certificate, and a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

(6) For the purposes of this section, the report of the official receiver shall be *prima facie* evidence of the statements therein contained.

(7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

(8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

(9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

29. In either of the following cases, that is to say :—

Fraudulent
settlements.

(i) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(ii) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife) ;

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order
of discharge.

30. (1) An order of discharge shall not release the bankrupt :—

(a) From any debt on a recognisance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against any law relating to any branch of the general revenue of the Colony, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Treasurer of the Colony certify in writing his consent to the bankrupt being discharged therefrom; or

(b) From any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or

(c) From any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Power for court
to annul
adjudication in
certain cases.

31. (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.

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(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt, shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

PART III.*Administration of Property.***PROOF OF DEBTS.**

32. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. Description of debts provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

(6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Ordinance, be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may assess the value, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall, for the purposes of this Ordinance, include:—

(a) Any compensation for work or labour done;

(b) Any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;

(c) Generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual credit
and set-off.

33. Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Ordinance and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off

against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

34. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second schedule to this Ordinance, the rules in that schedule shall be observed. Rules as to
proof of debts.

35. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts:— Priority of
debts.

(a) All Crown taxes and local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that date and not exceeding in the whole one year's assessment.

(b) All Crown rents not more than five years in arrear

(c) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding one hundred pounds.

(d) All wages of any labourer or workman not exceeding fifty pounds, whether payable for time or for piece-work, in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(7) Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of six pounds per centum per annum on all debts proved in the bankruptcy.

(9) Nothing in this section shall prejudice the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

Preferential
claim in case of
apprenticeship.

36. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the

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indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

37. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Landlord's
power of
distress in case
of bankruptcy.

38. (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business, until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

Postponement
of husband's
and wife's
claims.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to

claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

PROPERTY AVAILABLE FOR PAYMENT OF DEBTS.

Relation back of trustee's title.

39. (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against the judgment debtor in pursuance of section 99 of this Ordinance the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

Description of bankrupt's property divisible amongst creditors

40. The property of the bankrupt divisible amongst his creditors, and in this Ordinance referred to as the property of the bankrupt, shall not comprise the following particulars :—

(1) Property held by the bankrupt on trust for any other person;

(2) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding forty pounds in the whole :

But it shall comprise the following particulars :—

(a) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge ; and

(b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(c) All goods, being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

41. (1) In the event of a second or subsequent receiving order being made against a bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 49 of this Ordinance) vest in the trustee in the subsequent bankruptcy, but any unsatisfied balance of the debts provable under the last preceding bankruptcy may be proved in the subsequent bankruptcy by the trustee in the last preceding bankruptcy.

Provisions as to second bankruptcy.

(2) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt, he shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy.

EFFECT OF BANKRUPTCY ON ANTECEDENT AND OTHER TRANSACTIONS.

42. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment

Restriction of rights of creditor under execution or attachment.

before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Duties of sheriff
as to goods
taken in
execution.

43. (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

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(3) Where any goods in the possession of an execution debtor at the time of seizure by a sheriff are sold by such sheriff without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to such goods, and no person shall be entitled to recover against such sheriff or any other person lawfully acting under his authority, for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to such goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry, have ascertained that such goods were not the property of the execution debtor :

Provided that nothing in this subsection contained shall affect the right of any claimant, who may prove that at the time of sale he had a title to such goods, to any remedy to which he may be entitled against any person other than such sheriff.

44. (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

Avoidance of
certain
settlements.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall if the settlor is adjudged bankrupt and the covenant or contract has not been executed

at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy, under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy unless the persons to whom the payment or transfer was made prove either :—

(a) That the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(b) That at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) That the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three months after the money or property came into the possession or under the control of the settlor:

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

Avoidance of
general assign-
ments of book
debts unless
registered.

45. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment

has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Ordinance, 1909, with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules thereunder :

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section " assignment " includes assignment by way of security and other charges on book debts.

46. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

Avoidance of preference in certain cases.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(3) Where a receiving order is made against a judgment debtor in pursuance of section 99 of this Ordinance, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

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Protection of
bona fide
transactions
without notice.

47. Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Ordinance shall invalidate, in the case of a bankruptcy :—

(a) Any payment by the bankrupt to any of his creditors ;

(b) Any payment or delivery to the bankrupt ;

(c) Any conveyance or assignment by the bankrupt for valuable consideration ;

(d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration :

Provided that both the following conditions are complied with, namely :—

(i) That the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order ; and

(ii) That the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Validity of
certain
payments to
bankrupt and
assignee.

48. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Ordinance, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise *bona fide*.

49. (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property, whether movable or immovable, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Ordinance is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

Dealings with
undischarged
bankrupt.

For the purposes of this subsection, the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee or the official receiver.

REALISATION OF PROPERTY.

50. (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

Possession of
property by
trustee.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5) Subject to the provisions of this Ordinance with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

Seizure of
property of
bankrupt.

51. Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search warrant to any police officer or officer of the court, who may execute it according to its tenor.

Appropriation
of portion of
pay or salary
to creditors.

52. (1) Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee,

with the consent of the head of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection, the court shall communicate with the head of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the head of the department to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Treasurer of the Colony, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3) Nothing in this section shall take away or abridge any power of the head of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt forfeited.

53. Where a married woman who has been adjudged bankrupt has separate property the income of which is subject to a restraint on anticipation, the court shall have power, on the application of the trustee, to order that, during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and in the exercise of such power the court shall have regard to the means of subsistence available for the woman and her children.

Appropriation
of income of
property
restrained from
anticipation.

54. (1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Ordinance, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

Vesting and
transfer of
property.

(2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4) The certificate of appointment of a trustee shall for all purposes of any law in force in any part of the Colony requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

Disclaimer of
onerous
property.

55. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property :

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person:—

(a) Subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(b) If the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7) Where, on the release removal resignation or death of a trustee in bankruptcy, an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of
trustee to deal
with property.

56. Subject to the provisions of this Ordinance, the trustee may do all or any of the following things :

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

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(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

(4) Exercise any powers, the capacity to exercise which is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Ordinance;

(5) Deal with any property to which the bankrupt is beneficially entitled in the same manner as the bankrupt might have dealt with it.

57. The trustee may, with the permission of the committee of inspection, do all or any of the following things :—

Powers
exercisable by
trustee with
permission of
committee of
inspection.

(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;

(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.

(3) Employ an advocate or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

(6) Refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to allow
bankrupt to
manage
property.

58. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

Allowance to
bankrupt for
maintenance or
service.

59. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court.

60. Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn, or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realise his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Right of trustee to inspect goods pawned, etc.

61. Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Limitation of trustee's powers in relation to copyright.

62. Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

Protection of official receiver and trustee from personal liability in certain cases.

DISTRIBUTION OF PROPERTY.

63. (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

Declaration and distribution of dividends.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and
separate
dividends.

64. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provisions for
creditors
residing at a
distance, etc.

65. (1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them, if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

66. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Right of creditor who has not proved debt before declaration of a dividend.

67. (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

Interest on debts

(2) In dealing with the proof of the debt, the following rules shall be observed :—

(a) Any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one ;

(b) Any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate ;

(c) Where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

Final dividend

68. (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No action for dividend.

69. No action for dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus.

70. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.

Official Receiver and Staff.

Official receiver of debtors' estates.

71. There shall be an official receiver of debtors' estates, assisted by such staff as may be required from time to time. He shall be appointed and removable by and be under the general authority and directions of the Governor. He shall also be an officer of the court and shall be referred to as the "official receiver."

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72. (1) The duties of the official receiver shall have Status of official receiver.
relation both to the conduct of the debtor and to the administration of his estate.

(2) The official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Ordinance, administer oaths.

(3) All provisions in this or any other Ordinance, referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Ordinance otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Ordinance.

73. As regards the debtor, it shall be the duty of the official receiver :— Duties of official receiver as regards the debtor's conduct.

(a) To investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Ordinance, or any enactment repealed by this Ordinance, or which would justify the court in refusing, suspending or qualifying an order for his discharge ;

(b) To make such other reports concerning the conduct of the debtor as the court may direct ;

(c) To take such part as he may deem fit in the public examination of the debtor ;

(d) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Attorney-General may direct.

74. (1) As regards the estate of a debtor, it shall be the duty of the official receiver :— Duties of official receiver as to debtor's estate.

(a) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof ;

(b) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors it appears necessary so to do;

(c) To summon and preside at the first meeting of creditors;

(d) To issue forms of proxy for use at the meetings of creditors;

(e) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) To advertise the receiving order, the date of the creditors' first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(g) To act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods :

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

PART V.

Trustees in Bankruptcy.

OFFICIAL NAME.

75. The official name of a trustee in bankruptcy shall be " the trustee of the property of.....a bankrupt " (inserting the name of the bankrupt), and by that name the trustee may, in any part of the Colony or elsewhere, hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself, and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Official name of trustee.

APPOINTMENT.

76. (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term " trustee," and shall be joint tenants of the property of the bankrupt.

Power to appoint joint or successive trustees.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the court.

77. (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

Proceedings in case of vacancy in office of trustee.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the court, and the court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee.

CONTROL OVER TRUSTEE.

Discretionary
powers of
trustee and
control thereof.

78. (1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days :

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Ordinance, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to court
against trustee.

79. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

80. (1) The official receiver shall take cognisance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by ordinance, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as may be deemed expedient. .

Control of
official receiver
over trustees.

(2) The official receiver may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and, if the official receiver thinks fit, he may apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the trustee.

REMUNERATION AND COSTS.

81. (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

Remuneration
of trustees.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the court that the remuneration is unnecessarily large, the court shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the court, approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any advocate, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any advocate, or other person that may be employed about a bankruptcy.

Allowance and
taxation of
costs.

82. (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Ordinance or rules thereunder to be performed by himself.

(2) Where the trustee is an advocate, he may contract that the remuneration for his services as trustee shall include all professional services

(3) All bills and charges of advocates, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after the receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

RECEIPTS, PAYMENTS, ACCOUNTS, AUDIT.

83. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of fifty cents per folio of one hundred words, together with the cost of the postage thereof.

Trustee to
furnish list of
creditors.

84. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon the receipt of such notice, furnish and transmit such statement of the accounts :

Trustee to
furnish state-
ment of
accounts

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the court so direct.

85. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of court, personally or by his agent, inspect any such books.

Books to be
kept by trustee.

86. (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the official receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

Annual
statement of
proceedings.

(2) The official receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Trustee not to
pay into private
account.

87. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Payment of
money into the
prescribed
bank.

88. (1) A Bankruptcy Estates Account shall be kept by the official receiver with the prescribed bank, and all monies received by him in respect of proceedings under this Ordinance shall be paid to that account.

(2) Every trustee in bankruptcy shall in such manner and at such times as the official receiver shall direct pay the money received by him to the Bankruptcy Estates Account at the prescribed bank, and the official receiver shall furnish him with a certificate of receipt of the money so paid :

Provided that :—

(a) If it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the court that for any other reason it is for the advantage of the creditors that the trustee should have an account with the local bank, the court shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select :

(b) In any bankruptcy composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the court may, if for special reasons it thinks fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the court may direct.

(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

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(4) Subject to any general rules relating to small bankruptcies under section 116 of this Ordinance, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

89. (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' estates, the official receiver may place the same or any part thereof on fixed deposit with the prescribed bank.

Investment of
surplus funds.

(2) Whenever any money so placed on deposit is, in the opinion of the official receiver, required to answer any demands in respect of bankrupts' estates, the official receiver shall thereupon withdraw such money from fixed deposit and repay the same to the credit of the cash balance of the Bankruptcy Estates Account.

90. (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the official receiver an account of his receipts and payments as such trustee.

Audit of
trustee's
accounts

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the official receiver, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

VACATION OF OFFICE BY TRUSTEE.

Release of
trustee.

91. (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to the official receiver when he is, or is acting as, trustee, and when the official receiver has been released under this section, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

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(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office and thereupon the official receiver shall be the trustee.

(6) Where, on the release of a trustee, the official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

92. If a receiving order is made against a trustee, he shall thereby vacate his office of trustee. Office of trustee vacated by insolvency.

93. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee. Removal of trustee.

(2) If the court is of opinion:—

(a) That a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Ordinance; or

(b) That his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(c) That he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(d) That his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or

(e) Where, in any other matter he has been removed from office on the ground of misconduct, the court may remove him from his office.

PART VI.*Procedure and Powers of Court.***JURISDICTION.**

94. Subject to general rules, all bankruptcy matters shall be entitled "in bankruptcy." Description of bankruptcy proceedings.

95. Subject to the provisions of this Ordinance, and to general rules, a judge of the court may exercise in chambers the whole or any part of his powers. Judge may exercise his powers in chambers.

Official receiver
to make
payments in
accordance with
directions of
court.

96. Where any moneys or funds have been received by the official receiver under this Ordinance and the court makes an order declaring that any person is entitled to such moneys or funds, the official receiver shall make payment accordingly to that person.

General powers
of the court

97. (1) Subject to the provisions of this Ordinance, the court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within its cognisance, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where default is made by a trustee, debtor, or other person, in obeying any order or direction given by the official receiver, the court may on the application of the official receiver order such defaulting trustee, debtor, or person to comply with the order or directions so given; and the court may also, if it thinks fit upon any such application, make an immediate order for the committal of such defaulting trustee, debtor or person: Provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Disqualifications
of bankrupt.

98. (1) Where a debtor is adjudged bankrupt, he shall be disqualified for :—

(a) Being elected to, or sitting or voting in, the Legislative Council of the Colony, or on any committee thereof; or

(b) Being appointed or acting as a justice of the peace; or

(c) Being elected to, or holding or exercising the office of mayor or municipal councillor, or a member of a sanitary authority, school committee or road board.

(2) If a member of the Legislative Council of the Colony is adjudged bankrupt, and the disqualifications arising from his bankruptcy are not removed within six months from the date of the order, the court shall, immediately after the expiration of that time, certify the same to the President of the Legislative Council, and thereupon the seat of the member shall be vacant.

(3) If a person is adjudged bankrupt whilst holding the office of justice of the peace, mayor, or municipal councillor, or member of a sanitary authority, school committee or road board his office shall thereupon become vacant.

(4) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when :—

(a) The adjudication of bankruptcy against him is annulled; or

(b) A period of five years has elapsed from the date of his discharge; or

(c) He obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

JUDGMENT DEBTORS.

99. Where application is made by a judgment creditor to the court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Ordinance, except Part VIII thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Power to make receiving order in lieu of committal order.

APPEALS.

100. (1) The court may review, rescind or vary any order made by it.

Appeals in bankruptcy.

(2) Orders of the Supreme Court in bankruptcy matters shall, at the instance of the person aggrieved, be subject to appeal but no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

(3) Where by this Ordinance an appeal to the court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

PROCEDURE.

Discretionary
power of court.

101. (1) Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in court under this Ordinance shall be in the discretion of the court.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose.

(4) Where by this Ordinance, or by general rules, the time for doing any act is limited, the court may extend the time either before or after the expiration thereof upon such terms, if any, as it may think fit to impose.

(5) Subject to general rules, the court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or, out of the Colony, by commission.

Consolidation of
petitions.

102. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to
change carriage
of proceedings.

103. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Ordinance in the case of the petitioning creditor.

Continuance of
proceedings on
death of debtor.

104. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

Power to stay
proceedings.

105. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

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106. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to present petition against one partner.

107. Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Power to dismiss petition against some respondents only.

108. Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the same partnership shall be filed with the first-mentioned petition, and, unless the court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first mentioned member of the partnership, and the court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Property of partners to be vested in same trustee.

109. Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

Actions by trustee and bankrupt's partners.

110. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Actions on joint contracts.

111. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

Proceedings in partnership name.

ORDERS AND WARRANTS OF COURT.

Reciprocal
enforcement of
orders,
warrants and
search
warrants of
courts
subordinate to
the Court of
Appeal for
Eastern Africa.

112. Where the Governor in Council is satisfied that reciprocal provisions have been made by the legislature of any territory the court of which, having bankruptcy jurisdiction, is subordinate to the Court of Appeal for Eastern Africa, for the enforcement within such territory of orders, warrants or search warrants made or issued by the Court of the Colony of Kenya, the Governor may by proclamation direct that all orders, warrants or search warrants made or issued under the bankruptcy jurisdiction of the court of such territory shall be enforced by the court under this Ordinance in the same manner in all respects as if such order, warrant or search warrant had been made or issued by itself.

Commitment to
prison.

113. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and, if the gaoler of any prison refuses to receive any prisoner so committed, he shall on conviction be liable for every such refusal to a fine not exceeding one hundred pounds.

PART VII.

Supplemental Provisions.

APPLICATION OF ORDINANCE.

Married women.

114. (1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were *femme sole*.

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

Exclusion of
companies.

115. A receiving order shall not be made against any corporation or against any association or company registered under the Companies Ordinance, 1921, or any enactment repealed by that Ordinance.

116. Where a petition is presented by or against a debtor, if the court is satisfied, by affidavit or otherwise, or the official receiver reports to the court, that the property of the debtor is not likely to exceed in value three hundred pounds, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications :—

Application of Ordinance in case of small estates.

(1) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy ;

(2) There shall be no committee of inspection, but the official receiver may do, with the permission of the court, all things which may be done by the trustee with the permission of the committee of inspection.

(3) Such other modifications may be made in the provisions of this Ordinance as may be prescribed by general rules with the view of saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

117. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

Administration in bankruptcy of estate of person dying insolvent.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

(3) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver, as trustee thereof, and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Ordinance :

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance, relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the court.

(4) With the modifications hereinafter mentioned, all the provisions of Part III of this Ordinance (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (10) of this section, the following provisions, namely, section 27 of this Ordinance (which relates to inquiries as to the debtor's conduct, dealings and property), section 82 of this Ordinance (which relates to the costs of the trustees, managers, and other persons), section 116 of this Ordinance (which relates to the summary administration of small estates), and subsection (4) of section 91 of this Ordinance so far as it relates to the effect of the release of the official receiver shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance and section 37 of this Ordinance shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(5) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a

preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

(6) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(7) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee, save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(8) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor, and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under subsection (10) of this section.

(9) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided.

(10) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

GENERAL RULES.

118. The Rules Committee under the Civil Procedure Ordinance, 1924, with the addition of the official receiver, with the concurrence of the Governor in Council, may make general rules for carrying into effect the objects of this Ordinance.

Power to make
general rules.

FEES AND SALARIES, ETC.

Fees, etc.

119. The Chief Justice, with the concurrence of the Governor in Council, may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance.

Salaries and remuneration.

120. The Chief Justice, with the concurrence of the Governor in Council, shall direct whether any and what remuneration is to be allowed to any person (other than the official receiver or his staff) performing any duties under this Ordinance, and may vary, increase, or diminish such remuneration, as he may think fit.

EVIDENCE.

Gazette to be evidence.

121. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

122. (1) A minute of proceedings at a meeting of creditors under this Ordinance, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy.

123. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of the court, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

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124. Subject to general rules, any affidavit to be used in the court may be sworn before any person authorised to administer oaths in the court, or before a justice of the peace for the district where it is sworn, or in the case of a person residing out of the Colony, before any person qualified to administer oaths in the country where he resides (he being certified to be qualified as aforesaid by a British minister or British consul, or by a notary public).

Swearing of affidavits

125. In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by the court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Death of debtor or witness.

126. A certificate of the court that a person has been appointed trustee under this Ordinance shall be conclusive evidence of his appointment.

Certificate of appointment of trustee.

MISCELLANEOUS.

127. (1) Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

Computation of time.

(2) Where by this Ordinance any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

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Service of
notices.

128. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

Formal defect
not to invalidate
proceedings.

129. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Exemption of
deeds, etc., from
stamp duty.

130. Every deed, conveyance, assignment or other assurance relating solely to freehold or leasehold property, or to any mortgage charge or other incumbrance on, or any estate, right or interest in, any movable or immovable property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Ordinance.

Acting of
corporations,
partners, etc.

131. For all or any of the purposes of this Ordinance, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by the appointed manager of his estate.

Certain
provisions to
bind Crown.

132. Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

UNCLAIMED FUNDS OR DIVIDENDS.

Unclaimed and
undistributed
dividends or
funds under
this Ordinance.

133. (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Ordinance, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any

unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered, in any manner whatsoever, to collect, receive, or distribute any funds or dividends, have remained or remain unclaimed or undistributed for six months after they become claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay them to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish such trustee or other person with a certificate or receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

The official receiver may at any time order any such trustee or other person to submit to him an account verified by affidavit of the sums received and paid by him as aforesaid, and may direct and enforce an audit of the account.

The official receiver may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section the court shall have and, at the instance of the official receiver, may exercise, all the powers conferred by this Ordinance with respect to the discovery and realisation of the property of a debtor, and the provisions of Part II of this Ordinance with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4) Any person claiming to be entitled to any monies paid in to the Bankruptcy Estates Account, pursuant to this section, may apply to the official receiver for payment to him of the same, and the official receiver, if satisfied that the person claiming is so entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the official receiver in respect of his claim may appeal to the court.

PART VIII.

Bankruptcy Offences.

Fraudulent
debtors.

134. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of an offence :—

(1) If he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, movable and immovable, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud ;

(2) If he does not deliver up to the trustee, or as he directs, all such part of his movable and immovable property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud ;

(3) If he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud ;

(4) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud ;

(5) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he fraudulently removes any part of his property to the value of ten pounds or upwards ;

(6) If he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud ;

(7) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof ;

(8) If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law ;

(9) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law ;

(10) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law ;

(11) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs ;

(12) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within six months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses ;

(13) If, within six months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same ;

(14) If, within six months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;

(15) If, within six months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;

(16) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

(17) If he makes default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court is authorised to make an order. •

For the purpose of this section, the expression " trustee " means the official receiver of the debtor's estate or trustee administering his estate for the benefit of his creditors.

Undischarged
bankrupt
obtaining
credit.

135. Where an undischarged bankrupt :—

(a) Either alone or jointly with any other person obtains credit to the extent of ten pounds or upwards from any person without informing that person that he is an undischarged bankrupt; or

(b) Engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt;

he shall be guilty of an offence.

136. If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made :— Frauds by bankrupts, etc.

(a) In incurring any debt or liability has obtained credit under false pretences or by means of any other fraud; or

(b) With intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property; or

(c) With intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him;

he shall be guilty of an offence.

137. (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business :— Bankrupt guilty of gambling, etc.

(a) He has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or

(b) He has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(c) On being required by the official receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding

the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred :

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt failing
to keep proper
accounts.

138. (1). If any person who has on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors is adjudged bankrupt, or if a receiving order is made in respect of his estate, he shall be guilty of an offence, if, having during the whole or any part of the two years immediately preceding the date of the presentation of the bankruptcy petition been engaged in any trade or business, he has not kept proper books of account throughout those two years or such part thereof as aforesaid, and if so engaged at the date of presentation of the petition, thereafter, whilst so engaged, up to the date of the receiving order, or has not preserved all books of account so kept :

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section if his unsecured liabilities at the date of the receiving order did not exceed one hundred pounds, or if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) For the purposes of this section a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual stocktakings.

(4) Subsections (9), (10), and (11) of section 134 of this Ordinance shall, in their application to such books as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time mentioned in those subsections as the time prior to the presentation within which the acts or omissions specified in those subsections constitute an offence.

(5) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

139. If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits the Colony and takes with him, or attempts or makes preparation to quit the Colony and take with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

Bankrupt
absconding with
property.

140. If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for a term not exceeding one year.

False claim,
etc.

141. Where an official receiver or a trustee in a bankruptcy reports to the court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence

Order by court
for prosecution
on report of
trustee.

under this Ordinance, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted, order that the debtor be prosecuted for such offence :

Provided that it shall not be obligatory on the court in the absence of any application by the official receiver for such an order to make an order under this section for the prosecution of an offence, unless it appears to the court that the circumstances are such as to render a prosecution desirable.

Criminal
liability after
discharge or
composition.

142. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Power for court
to commit
for trial.

143. (1) Where there is, in the opinion of the court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by law made an offence in cases of bankruptcy, the court may commit the bankrupt or such other person for trial.

(2) For the purpose of committing the bankrupt or such other person for trial, the court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise. Nothing in this subsection shall be construed as derogating from the powers or jurisdiction of the court.

Trial and
punishment of
offences.

144. (1) A person guilty of an offence under this Ordinance in respect of which no special penalty is imposed by this Ordinance shall be liable, on conviction, to imprisonment of either description for a term not exceeding two years :

Provided that the maximum term of imprisonment of either description which may be awarded on conviction for an offence under section 136 of this Ordinance, shall be one year.

(2) Proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof, either by the official receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

(3) When any person is charged with any offence under this Ordinance a court shall take into consideration any evidence tending to show that the act charged was not committed with a guilty intent.

(4) In a charge for an offence under this Ordinance, it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, the court acting under this Ordinance.

145. Where the court orders the prosecution of any person for any offence under this Ordinance or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Attorney-General to institute and carry on the prosecution :

Attorney-General to act in certain cases.

Provided that, where the order of the court is made on the application of the official receiver and based on his report, the official receiver may institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before a subordinate court, unless in the course thereof circumstances arise which render it desirable that the remainder of the proceedings should be carried on by the Attorney-General.

146. A statement or admission made by any person in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence relating to frauds by agents, bankers, or factors.

Evidence as to frauds by agents.

147. The Provincial Insolvency Act, 1907, Application Ordinance, 1910, is hereby repealed and the said Act shall cease to apply to the Colony :

Repeal.

Provided always that such repeal is without prejudice to anything lawfully done, any penalty incurred or any liability imposed thereunder, and any such penalty or liability may be recovered or decided, as the case may be, in proceedings taken in the same manner in all respects as if this Ordinance had not been made and provided further that the said repealed Ordinance shall continue to govern the administration of estates adjudicated insolvent before the commencement of this Ordinance.

THE FIRST SCHEDULE.

(Section 15.)

MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in the Gazette and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon, which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Ordinance.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly

proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value his security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per centum : Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment or of any person authorised to administer oaths in the court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

(a) For or against any specific proposal for a composition or scheme of arrangement ;

(b) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection ;

(c) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof

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20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the official receiver to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of

the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28. The vote of the trustee, or of his partner, clerk, advocate, or advocate's clerk, either as creditor, or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

THE SECOND SCHEDULE.

(Section 34.)

PROOF OF DEBTS.

Proof in Ordinary Cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (a) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(b) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(c) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not within six months

after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made *bona fide* on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realise it, or if it is realised under the provisions of Rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Ordinance.

Proof in Respect of Distinct Contracts.

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of these periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision.

25. The court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

No. II.*Appropriation***1926.**

No. 2 OF 1926.

**An Ordinance to Apply a Sum of Money for the
Service of the Year Ending the 31st day of
December, 1926.**

[13TH FEBRUARY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as “ the Appropriation Short title.
Ordinance, 1925.”

2. The Public Revenue for the year 1926, and other Public Revenue
funds of the Colony and Protectorate of Kenya, are hereby charged.
charged towards the service of the year ending the thirty-first
day of December, one thousand nine hundred and twenty-six,
with a sum of Two Million, Three Hundred and Eighty-eight
Thousand, Seven Hundred and Fifty-three pounds.

3. The money granted by this Ordinance shall be applied Application of
to the purposes and services expressed in the Schedule annexed money granted.
hereto.

4. The Treasurer of the Colony and Protectorate of Treasurer's
Kenya is hereby authorised and required from time to time, authority for
upon the Warrant or Order of the Governor to pay out of the payment.
Revenue and other funds of the Colony and Protectorate of
Kenya, for the several services specified in the Schedule, the
said sum of Two Million, Three Hundred and Eighty-eight
Thousand, Seven Hundred and Fifty-three pounds, which will
come in course of payment during the year ending on the
thirty-first day of December, one thousand nine hundred and
twenty-six.

No. II.

Appropriation

1926.

SCHEDULE.

<i>Division.</i>	<i>Amount.</i> £
I. Public Debt Funded	365,000
II. Rent and Interest to H.H. the Sultan of Zanzibar	16,000
III. Pensions and Gratuities	86,538
IV. His Excellency the Governor	15,319
IVa. His Excellency the Governor— Extraordinary	—
V. Secretariat	18,978
VI. " Official Gazette " and Printing	18,594
VIa. " Official Gazette " and Printing— Extraordinary	—
VII. Administration	252,528
VIIa. Administration—Extraordinary	—
VIII. Treasury	21,428
IX. Customs Department	41,061
X. Port and Marine Departments	18,128
Xa. Port and Marine Departments— Extraordinary	1,180
XI. Audit Department	16,541
XII. Judicial Department	23,284
XIII. Registrar-General's Department	3,314
XIV. Legal Department	9,267
XV. Police	130,495
XVI. Prisons	43,743
XVII. Medical Department	178,964
XVIIa. Medical Department—Extraordinary	1,000
XVIII. Education	100,343
XVIIIa. Education—Extraordinary	5,470
Carried forward £ ...	1,367,175

No. II.

Appropriation

1926.

SCHEDULE—(contd.)

<i>Division.</i>	<i>Amount.</i>
	£
Brought forward ...	1,367,175
XIX. Military ...	124,502
XIXa. Military—Extraordinary ...	4,238
XX. Post Office and Telegraphs ...	135,943
XXa. Post Office and Telegraphs— Extraordinary ...	4,640
XXI. Agricultural Department ...	116,574
XXII. Forest Department ...	31,571
XXIII. Game Department ...	14,346
XXIV. Land Department ...	41,303
XXIVa. Land Department—Extraordinary ...	—
XXV. Miscellaneous Services ...	75,158
XXVI. Interest ...	170,000
XXVII. Public Works Department ...	69,008
XXVIII. Public Works—Recurrent ...	167,620
XXIX. Public Works—Extraordinary ...	61,675
XXX. Trade Information and Publicity Bureau.	5,000
Total ...	<u>£2,388,753</u>

Heads & Rules Rules 1931 & 1934

Coffee Rules 1934

Coffee Rules N & S. K. Govt

No. III. Notice No. 673

*applied to C. K. N. K. & S. K.
Cass. No. 244/36 & 265/36
100 O. G. 1936 Page 366
Crop Production and Livestock*

1926.

NO. 3 OF 1926.

An Ordinance to make Provision for the Control and Improvement of Crop Production and Livestock, and the Marketing thereof.

Date of commencement.

[29TH MARCH, 1926.]

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

Short title.

1. This Ordinance may be cited as “ the Crop Production and Livestock Ordinance, 1926.”

Application of Ordinance.

2. The Governor may by order apply the whole or any part of this Ordinance to the whole or part or parts of the Colony.

Definition.

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

“ Crop ” shall include all trees grown either for timber, fuel, food production, or any other purpose.

“ Livestock ” includes cattle, sheep, goats and donkeys and any other animal which the Governor may by order declare to be included in the definition for the purpose of this Ordinance.

“ Agricultural produce ” means any article produced or derived from farming operations and includes meat and all other products derived from livestock.

Rules.

4. The Governor in Council may from time to time make rules which shall be applicable to such area or areas as may be named therein for the following purposes :—

(a) Declaring the kind of crop or agricultural produce which shall come under the operation of this Ordinance.

(b) Improving the cultural conditions of any crop, also the methods of its production, and the prevention of its destruction or waste.

(c) Improving the quality of any agricultural produce.

Wattle Bark (Improvement & Inspection) Rules 1937.

Native Produce (Improvement & Inspection) Rules 1937

HIDES and SKINS Rules 1937.

Native Eggs Rules 1945-

Native Grown Coffee Rules ~~1934~~ 1934

Sanctum Grazing Control Rules 1936

Native Rulley Rules 1915

Improvement of Copra Rules 1942

Potato (Weight of Bags) Rules 1940.

Rice Factory Rules 1939.

Rules Wattle Bark (Marketing) Rules 1935-
See G. N. 100/35

No. III.

Crop Production and Livestock

1926

(d) Specifying any particular kind of crop, tree, or plant, or variety thereof, as the kind or kinds which may or may not be grown, or which may or may not be destroyed.

(e) The destruction of any diseased crop or agricultural produce with or without compensation to owner or owners thereof.

(f) ^{Assisting} and, if necessary, controlling, transportation ^{and} preparation for market and marketing of agricultural produce ~~for purpose of sale~~

ord 47/49

any crop or

(g) The inspection of any crop or agricultural produce, ^{(1) The regulation, licensing, and control of trade in any}
 (c) ^{agricultural produce} For defining or limiting the number, kind, ages and sexes of the livestock to be carried on any area.

ord 47/49

(h) ⁽²⁾ For promoting the improvement of the quality of the livestock in any area and preventing losses from disease or other cause.

(k) ⁽³⁾ For the disposal of surplus and undesirable livestock.

(l) ⁽⁴⁾ For fixing and collecting fees and charges in connection with the operations of this Ordinance.

(m) ⁽⁵⁾ For generally carrying out the provisions of this Ordinance.

5. Any person who commits a breach of any rule made under this Ordinance shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding five hundred shillings, or to both; and shall also be liable to confiscation of any crop or livestock in respect of which the breach was committed. Penalty.

**An Ordinance to Amend the Arms and
Ammunition Ordinance, 1925.**

Date of
commencement.

[29TH MARCH, 1926.]

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

Short title.

1. This Ordinance may be cited as “ the Arms and
Ammunition (Amendment) Ordinance, 1926,” and shall be
read as one with the Arms and Ammunition Ordinance, 1925,
hereinafter referred to as “ the Principal Ordinance.”

Amendment of
Section 22 of
the Principal
Ordinance.

2. Section 22 of the Principal Ordinance is repealed and
the following substituted therefor :—

“ 22. No arms shall be repaired except at Govern-
ment arsenals or at arsenals or establishments licensed by
the Governor for that purpose. Before such a licence is
granted guarantees shall be given for the observance of the
rules of the Convention in such form as the Governor shall
direct :

“ Provided that nothing in this section shall be
deemed to prohibit a person repairing arms belonging to
himself with or without assistance.”

Repeal of
Section 31 of
the Principal
Ordinance.

3. Section 31 of the Principal Ordinance is hereby
repealed.

No. V.

108

Game

1926.

No. 5 OF 1926.

*Repealed
7/26*

**An Ordinance to Amend the Game Ordinance,
1921.**

[29TH MARCH, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as " the Game (Amendment) Ordinance, 1926," and shall be read as one with the Game Ordinance, 1921, hereinafter called the Principal Ordinance and with all amendments to the Principal Ordinance.

Short title.

2. Section 12 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Amendment of
Section 12 of
the Principal
Ordinance.

" 12. (1) When any animal mentioned in any of the Schedules hereto is captured or killed in contravention of this Ordinance such animal or the trophies of such animal shall belong to Government.

" (2) When any animal mentioned in any of the Schedules hereto or any part of such animal is found, the trophies of such animal or of such part of the animal shall belong to Government.

" (3) When any animal mentioned in any of the Schedules hereto is killed by any person in self-defence, or by accident, or in error, the trophies of such animal shall belong to Government; unless the person killing such animal is in possession of a licence the conditions of which entitle him to kill that animal.

" (4) Any person not being in possession of the appropriate licence, killing such animal in self-defence, or by accident, or in error, shall report at once to the nearest District Commissioner, Game Warden or Police Officer and shall hand in such of the trophies as may be required by the Governor. Failure to comply with the provisions of this subsection shall be an offence against this Ordinance.

“ (5) Any person removing any trophy the property of Government with the intention of depriving Government of the same, shall be guilty of an offence against this Ordinance.

“ (6) The Governor may waive the right of Government in respect of any animal or any trophy as he may deem fit.

“ (7) The Governor may direct the payment of such compensation as shall cover the cost of transport of any trophy to the nearest Government station in any case as he may deem fit.

“ (8) The Governor may by Proclamation published in the Gazette authorise the payment to persons finding ivory of rewards calculated in such manner and subject to such conditions as shall be specified in such Proclamation.”

Amendment of
Section 33 of
the Principal
Ordinance.

3. Section 33 of the Principal Ordinance is hereby amended by inserting after the words “ Sections 4 and 24 of this Ordinance ” the words “ except with the consent in writing of the Game Warden.”

No. VI.

Detention Camps

1926.

No. 6 OF 1926.

*Amended
12/30*

**An Ordinance to Amend the Detention Camps
Ordinance, 1925.**

[29TH MARCH, 1926.]

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya with
the advice and consent of the Legislative Council thereof :

1. This Ordinance may be cited as "the Detention Camps (Amendment) Ordinance, 1926," and shall be read as one with the Detention Camps Ordinance, 1925, hereinafter referred to as the Principal Ordinance. Short title.

2. Section 5 of the Principal Ordinance is amended by the addition of the following provisos :— Amendment of
Section 5 of the
Principal
Ordinance.

" (1) A sentence of detention shall in no case exceed the period of imprisonment to which the prisoner could have been sentenced if the Ordinance had not been passed : *Repealed
and substituted
by Ord. 18/30*

" (2) Where an Ordinance provides for fine only or for fine and imprisonment in default of payment the Court may order that in default of payment a sentence of detention be undergone in lieu of imprisonment."

3. The period of detention imposed by a Court under this Ordinance in respect of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Ordinance be such period as in the opinion of the Court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the scale shown in the Schedule hereto. Period of
detention in
lieu of
imprisonment.

*Repealed
by Ord. 21/25*

No. VI.

Detention Camps

1926.

SCHEDULE.

Where the amount of the sum or sums of money adjudged to be paid by a conviction as ascertained by the conviction	The said period shall not exceed.
Does not exceed Shs. 10 ...	Seven days.
Exceeds Shs. 10, but does not exceed Shs. 20 ...	Fourteen days.
Exceeds Shs. 20, but does not exceed Shs. 100 ...	One month.
Exceeds Shs. 100, but does not exceed Shs. 400 ...	Two months.
Exceeds Shs. 400 ...	Three months.

*Repealed
by Ord. 24/35*

*Amend. Act,
No. 7/26.*

No. 7 OF 1926

An Ordinance to Amend the Revised Edition of the Laws of the Colony in accordance with the Amendments in the Years 1924, 1925 and 1926 to the Ordinances now included in the Revised Edition of the Laws.

[24TH JUNE, 1926.]

WHEREAS under the authority of the Revised Edition of the Laws Ordinance, 1921, three volumes of the new and revised edition of the Statute Law of the Colony have been prepared and a proclamation is shortly to announce that the said volumes are ready for issue :

AND WHEREAS the said volumes have effect only up to and including the thirty-first day of December, 1923 :

AND WHEREAS it is necessary to incorporate in the said volumes the various amendments of the law which have been effected by Ordinances passed since the aforesaid date :

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

- | | |
|---|---|
| 1. This Ordinance may be cited as “ the Revised Edition of the Laws (Operation) Ordinance, 1926.” | Short title |
| 2. This Ordinance shall come into operation on the date of the publication of the proclamation announcing the issue of the new Edition of the Statute Law of the Colony in force on the thirty-first day of December, 1923. | Date of commencement |
| 3. The several enactments mentioned in the First Schedule to this Ordinance are hereby repealed. | Repeal of enactments in First Schedule |
| 4. The several Chapters of the Revised Edition of the Laws mentioned in the Second Schedule to this Ordinance are hereby amended in the manner indicated in the said Schedule. | Amendments of the Revised Edition. |
| 5. The several Chapters of the Revised Edition of the Laws mentioned in the Third Schedule to this Ordinance are hereby repealed. | Repeal of Chapters of the Revised Edition |

FIRST SCHEDULE.**ORDINANCES REPEALED.**

Ordinance No.	Title.
1 of 1924.	The Legislative Council (Amendment) Ordinance, 1924.
4 „	The General Revision Ordinance, 1924.
6 „	The Criminal Procedure (Amendment) Ordinance, 1924.
8 „	The Widows and Orphans Pension (Amendment) Ordinance, 1924.
12 „	The Criminal Procedure (Amendment) Ordinance (No. 2), 1924.
13 „	The Nairobi (Rating of Unimproved Site Values) (Amendment) Ordinance, 1924.
14 „	The Native Authority (Amendment) Ordinance, 1924.
15 „	The Master and Servants (Amendment) (No. 2) Ordinance, 1924.
18 „	The Master and Servants (Amendment) (No. 3) Ordinance, 1924.
20 „	The Divorce (Amendment) Ordinance, 1924.
22 „	The Liquor (Amendment) Ordinance, 1924.
23 „	The Revised Edition of the Laws (Amendment) Ordinance, 1924.
24 „	The Registration of Business Names (Amendment) Ordinance, 1924.
27 „	The Public Travel and Access Roads (Amendment) Ordinance, 1924.

ORDINANCES REPEALED—*Contd.*

Ordinance No.	Title.
30 of 1924.	The East Africa Police (Amendment) Ordinance, 1924.
31 ,,	The Traders Licensing (Amendment) Ordinance, 1924.
32 ,,	The Coconut Industry (Amendment) Ordinance, 1924.
1 of 1925.	The Non-Native Poll Tax (Amendment) Ordinance, 1925.
2 ,,	The Natives' Trust Fund (Amendment) Ordinance, 1925.
4 ,,	The Master and Servants (Amendment) Ordinance, 1925.
6 ,,	The Fish Protection (Amendment) Ordinance, 1925.
9 ,,	The Prisons (Amendment) Ordinance, 1925.
10 ,,	The Customs Tariff (Amendment) Ordinance, 1925.
11 ,,	The Customs (Amendment) Ordinance, 1925.
12 ,,	The Electric Power (Amendment) Ordinance, 1925.
15 ,,	The Criminal Procedure (Amendment) Ordinance, 1925.
17 ,,	The Vagrancy (Amendment) Ordinance, 1925.
18 ,,	The Cotton (Tax) (Amendment) Ordinance, 1925.
19 ,,	The Agricultural Produce Export (Amendment) Ordinance, 1925.
20 ,,	The Liquor (Amendment) Ordinance, 1925.
22 ,,	The Reformatory Schools (Amendment) Ordinance, 1925.
26 ,,	The Patents and Designs (Amendment) Ordinance, 1925.
27 ,,	The Wireless Telegraphy (Amendment) Ordinance, 1925.
28 ,,	The Arbitration (Amendment) Ordinance, 1925.
5 of 1926.	The Game (Amendment) Ordinance, 1926.

SECOND SCHEDULE.

AMENDMENTS OF REVISED EDITION.

CHAPTER 7 (CRIMINAL PROCEDURE).

- Amendment to section 266. *Section 266 is amended by the deletion in subsection (1) of the words " named in the said revised list," and by the insertion at the beginning of subsection (2) of the words " In the case of persons named in the said revised list."*
- Repeal of section 323, subsections (3) and (4). *Section 323, subsections (3) and (4) are repealed.*
- Repeal and re-enactment of section 331. *Section 331 is repealed and the following substituted therefor :—*
- Summary dismissal of appeal. *331. (1) On receiving the petition and copy under section 329 or section 330 the Supreme Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :*
- Provided that no appeal presented under section 329 shall be dismissed unless the appellant if not in custody, or his advocate, has had a reasonable opportunity of being heard in support of the same, and provided further that no appeal presented under section 330 shall be dismissed unless the appellant's advocate (if the court has been notified that he has an advocate) has had such opportunity.*
- (2) Before dismissing an appeal under this section, the court may call for the record of the case, but shall not be bound to do so.*
- Section 332 is repealed and the following substituted therefor :—*
- Notice of time and place of hearing. *332. If the Supreme Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Attorney-General of the time and place at which such appeal will be heard, and shall furnish the Attorney-General with a copy of the proceedings and of the grounds of appeal.*

No. VII. Revised Edition of Laws (Operation)**1926.**

Section 333 is repealed and the following substituted therefor :—

333. (1) The Supreme Court shall then send for the record of the case, if such record is not already in court. After perusing such record and hearing the appellant or his advocate, if he appears, and the Public Prosecutor if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may :—

Powers of
appellate court.

(a) In an appeal from a conviction :—

(1) reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction, or commit him for trial, or

(2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence, or

(3) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) In an appeal from any other order alter or reverse such order;

(c) Make any amendment or any consequential or incidental order that may be just or proper.

(2) An appellant who is in custody shall not be entitled to be present at the hearing of an appeal : Provided that the court may, in any case in which it considers it to be in the interest of the appellant that he be present, direct his attendance.

Section 427 is amended by adding after the words “ expenses of any ” the words “ Juror, Assessor ”.

Amendment to
section 427.

Sections 447, 448 and 449 are repealed and the following substituted therefor :—

CASE STATED AND REFERENCES.

Case stated by
magistrate.

447. After the hearing and determination by any magistrate of any summons, charge, information or complaint, either party to the proceedings before the said magistrate may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction apply in writing within thirty days after the said determination to the said magistrate to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party, hereinafter called "the appellant," shall within fourteen days after receiving such case transmit the same to the Supreme Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in which the determination was given, hereinafter called "the respondent".

Recognizance
to be taken and
fees paid.

448. The appellant, at the time of making such application and before the case shall be stated and delivered to him by the magistrate shall in every instance enter into a recognizance before such magistrate with or without surety or sureties, and in such sum, not exceeding fifty pounds, as to the magistrate shall seem meet, conditioned to prosecute such appeal without delay, and to submit to the judgment of the Supreme Court, and pay such costs as may be awarded by the same; and before he shall be entitled to have the case delivered to him, pay to the clerk of such magistrate his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees shall be in accordance with Schedule IV hereto, and which shall be paid in stamps to be affixed to the original case stated, recognizance or certificate of refusal, as the case may be, and shall be cancelled by the magistrate.

The appellant if then in custody shall be liberated upon the recognizance being further conditioned for his appearance before the same magistrate, or if that is impracticable, before some other magistrate exercising the same jurisdiction who shall be then sitting, within fourteen days after the judgment of the Supreme Court shall have been given, to abide such judgment unless the determination appealed against be reversed :

Provided that nothing in this section shall apply to an application for a case stated by or under the direction of the Attorney-General.

449. If the magistrate be of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal: Provided that the magistrate shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney-General, who may require a case to be stated with reference to proceedings to which he was not a party.

Magistrate may refuse case when he thinks application frivolous.

449A. When a magistrate has refused to state a case as aforesaid, it shall be lawful for the appellant to apply to the Supreme Court within two months of such refusal upon an affidavit of the facts for a rule calling upon such magistrate and also upon the respondent to show cause why such case should not be stated, and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the magistrate upon being served with such rule absolute shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Procedure on refusal of magistrate to state case.

449B. The Supreme Court shall (subject to the provisions of section 449c) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the magistrate with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the court may seem fit, and all such orders shall be final and conclusive on all parties: Provided always that no magistrate who shall state and deliver a case in pursuance of this Ordinance or *bona fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal, and provided further that no costs shall be awarded against the Crown except where the Crown is the appellant.

Supreme Court to determine the questions on the case; its decision to be final.

449c. The Supreme Court shall have power, if it thinks fit:—

Case may be sent back for amendment or rehearing.

(a) To cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;

(b) To remit the case to the magistrate for rehearing and determination with such directions as it may deem necessary.

Powers of
magistrate after
decision of
Supreme Court.

449D. After the decision of the Supreme Court has been given on a case stated the magistrate in relation to whose determination the case has been stated, or any other magistrate exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as the magistrate who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the magistrate for enforcing such conviction or order, by reason of any defect in the same respectively.

Appellant may
not proceed
under both
Subdivision
XXVII
and this
Subdivision.

449E. No person who has appealed under Subdivision XXVII of this Ordinance shall be entitled to have a case stated and no person who has taken any proceedings under this Subdivision shall be entitled to appeal under Subdivision XXVII.

Contents of
case stated.

449F. A case stated by a magistrate under this Subdivision shall set out :—

- (a) The charge, summons, information or complaint;
- (b) The facts found by the magistrate to be admitted or proved;
- (c) Any submission of law made by or on behalf of the prosecutor or complainant during the trial;
- (d) Any submission of law made by or on behalf of the accused or defendant during the trial;
- (e) The finding, and, in case of conviction, the sentence of the magistrate;
- (f) Any question or questions of law which the magistrate or any of the parties may desire to be submitted for the opinion of the Supreme Court;
- (g) Any question of law which the Attorney-General may require to be submitted for the opinion of the Supreme Court.

No. VII. Revised Edition of Laws (Operation)**1926.**

449G. A case stated for the opinion of the Supreme Court shall be heard by not less than two judges. If on the hearing of a case stated the court is equally divided in opinion the decision of the magistrate shall be affirmed.

Constitution of court hearing cases stated.

449H. The Supreme Court may if it deems fit enlarge any period of time prescribed by the preceding sections of this Subdivision.

Supreme Court may enlarge time.

449I. (1) When any person has, in a trial before a judge of the Supreme Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the judge, if he thinks fit, may reserve and refer for the decision of a court consisting of two or more judges of the Supreme Court, any question which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of Supreme Court.

(2) If the judge reserves any such question the person convicted shall, pending the decision thereon, be remanded to gaol, or if the judge thinks fit, be admitted to bail; and the Supreme Court shall have power to review the case, or such part thereof as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the court of original jurisdiction, and to pass such judgment or order as the Supreme Court thinks fit.

SCHEDULE IV.

FEES TO BE TAKEN BY MAGISTRATES.

(See Section 448.)

	<i>Shs.</i>	<i>Cts.</i>
For drawing case and copy, when the case does not exceed five folios of one hundred words each ...	10	00
When the case exceeds five folios, then for every additional folio. ...	1	00
For the recognizance to be taken in pursuance of section 448 ...	5	00
For every enlargement or renewal thereof ...	2	50
For certificate of refusal of case ...	2	00

CHAPTER 18 (ARBITRATION).

After Section 21 the following section is added :—

Staying of
court
proceedings in
respect of
matters to be
referred to
arbitration
under
commercial
agreements.

22. Notwithstanding anything in this Ordinance, if any party to a submission made in pursuance of an agreement to which the Protocol on arbitration signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations on the twenty-fourth day of September, 1923, which Protocol is set forth in Schedule III hereto, applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking other steps in the proceedings, apply to the court to stay the proceedings, and that court or a judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, shall make an order staying the proceedings.

SCHEDULE III.

Protocol on Arbitration Clauses, signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations held on the twenty-fourth day of September, 1923 :

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

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2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the contracting parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and

inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories; that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

CHAPTER 24 (LEGISLATIVE COUNCIL).

Section 3 is repealed and the following substituted therefor :—

Representation
electorates.

3. Seventeen members shall be elected in accordance with the provisions of this Ordinance to represent the following electoral areas in the Council, namely :—

(1) One European member for each of the electoral areas described in Schedule I, Part A.

(2) Five Indian members to represent the interests of the Indian community for the electoral area described in Schedule I, Part B.

(3) One Arab member to represent the interests of the Arab community for the electoral area described in Schedule I, Part B.

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Section 6 is repealed and the following substituted therefor :—

6. For each electoral area a separate register of the persons entitled to vote in such area for the election of a member or members, as the case may be, shall be prepared, published and revised in the manner prescribed by the Rules contained in Schedule II and all amendments thereof. Registers of voters.

Section 9 subsection (1) is repealed and the following substituted therefor :—

(1) (a) Is not a British subject of European origin or descent; Disqualification of voters.

(b) Is not a British subject of Indian origin or descent, or is not an Indian under the suzerainty or protection of His Majesty;

(c) Is not a male Arab, a British subject or under the protection or suzerainty of His Majesty, able to write Arabic or Swahili in Arabic characters.

Between *Section 11* and *Section 12* there shall be inserted the following section :—

11A. Any person, not otherwise disqualified under the provisions of this Ordinance, shall be entitled :— Qualification for registration.

(a) If a British subject of European origin or descent, to have his name entered in the register of voters for one of the electoral areas described in Schedule I, Part A;

(b) If a British subject of Indian origin or descent, or an Indian under the suzerainty or protection of His Majesty, to have his name entered in the register of voters for the electoral area described in Schedule I, Part B;

(c) If a male Arab, a British subject or under the protection or suzerainty of His Majesty, to have his name entered in the register of voters for the electoral area described in Schedule I, Part B.

Section 16 is amended by the addition thereto of the following paragraph :— Amendment to section 16.

Each voter may give one vote and no more for each of any number of persons not exceeding the number to be elected.

Amendment to Schedule I. *Schedule I* is amended as follows :—

(a) Below the word and figure “ Schedule I ” there shall be added the word and letter “ Part A.”

(b) After the said schedule there shall be added the following part :—

PART B.

12. The Colony and Protectorate.

CHAPTER 34 (WIDOWS' AND ORPHANS' PENSIONS).

Repeal and re-enactment of section 3, subsection (2). *Section 3 subsection (2)* is repealed and the following substituted therefor :—

(2) (a) Subject to the same exceptions, every European officer who was in, or selected for appointment to, the East African Service on the first day of April, 1921, may if at the time of election he is in the service of this Government, by a written notice addressed to the Crown Agents and received by them before the first day of October, 1922, elect to become a contributor; and if he so elect, he shall contribute as from the first day of the month after that in which his notice was received by the Crown Agents.

(b) Subject to the same exceptions, any European officer in the service of the Government who was in, or selected for appointment to the East African Service on the first day of April, 1921, and who has not since become a contributor, may apply to this Government for special permission to become a contributor, and if, after the examination of the officer by a Government Medical Board, the Governor in his discretion decides that such permission should be granted, the officer shall contribute as from the first day of the month next after that in which the Governor's decision is notified to him.

Repeal and re-enactment of section 4, subsection (1) (b). *Section 4 subsection (1) (b)* is repealed and the following substituted therefor :—

(1) (b) Officers, non-commissioned officers and men of the active list of the Navy, the Regular Army, or the Royal Air Force temporarily employed by an East African Government in either a military or civil capacity, and all officers and non-commissioned officers of the King's African Rifles, except those holding pensionable posts under the Government.

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Section 4 subsection (1) is amended by the addition of the following clauses :— Amendment of section 4, subsection (1).

(e) Persons whose engagement is for a specified period which is less than twenty months or persons whose engagement not being for a specified period is terminable at one month's notice or less.

(f) Persons who are unmarried and are at the time of employment under the age of twenty-one years : Provided that if they are otherwise liable to contribute under the terms of this Ordinance, they shall, on becoming married or on reaching the age of twenty-one, forthwith become contributors.

Section 5 subsection (1) (b) is amended by the deletion of the words " after medical examination " and by the substitution therefor of the words " after examination by a Government Medical Board ". Amendment of section 5, subsection (1) (b).

Section 5 subsection (1) is amended by the addition of the following clause :— Amendment to section 5, subsection (1).

(d) No officer shall, after attaining the age of 49, contribute at a higher rate than that at which he was contributing before attaining that age.

This clause shall have effect from the first day of April, 1921.

Section 21 is amended by the deletion of the words " ceases to assist " and by the substitution therefor of the words " does not assist or ". Amendment of section 21.

CHAPTER 36 (POLICE).

Section 27 subsection (1) is repealed and the following substituted therefor :—

27. (1) (a) Every European constable shall be enlisted for the first term of his engagement to serve for a tour of not less than twenty months' continuous residential service, beginning from the date of enlistment in the Colony, and for such additional period as shall from time to time be fixed by the Governor, provided that the tour of service and such additional period as may be fixed shall not together exceed thirty-six months. First term of engagement.

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When placed
on permanent
and pensionable
establishment.

(b) Any such constable, of good character and approved service who has completed a tour of twenty months' continuous residential service (in this Ordinance referred to as the probationary period) may be placed on the permanent and pensionable establishment in accordance with the rules from time to time laid down for European officers in the service of the Colony and the Protectorate, and in such event the probationary period shall count towards pensionable service.

Repeal of
section 28,
subsection (1).

Section 28 subsection (1) is repealed.

Amendment to
section 28,
subsection (4).

Section 28 subsection (4) is amended by the deletion therefrom of the words " Any European constable upon attaining the age of 50 years and completing the period of service in which he is then engaged and ".

Section 34 is repealed and the following substituted therefor :—

Discharge of a
European
constable with
or without
pension or
gratuity.

34. (1) Any European constable may be discharged by the Commissioner at any time :—

(a) Without pension or gratuity :—

(i) If he shall fail to present himself for attestation.

(ii) If the Commissioner shall consider that he is unlikely to become an efficient constable.

(iii) When he has not completed a tour of twenty months' continuous residential service in the Colony and is pronounced by a medical officer, designated by the Government to examine him, to be mentally or physically unfit for further service.

(iv) On purchase of discharge, if approved by the Commissioner, at the following rates :—

£30	0	0	during the first year of service.	
£22	10	0	„ second „	
£15	0	0	„ third „	

and, unless at that time he has completed a tour of twenty months' continuous residential service, he shall also refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing him to the Colony :
Provided, however, if at that time he has completed

a tour of twenty months' continuous residential service, he shall, if so approved by the Commissioner, be entitled to determine his engagement without any liability to purchase his discharge.

(v) When sentenced to be dismissed from the force for misconduct.

(b) With pension or gratuity according to length of service :—

(i) When he has completed a tour of twenty months' continuous residential service in the Colony and is pronounced by a medical officer, designated by the Government to examine him, to be mentally or physically unfit, not through his own misconduct, for further service.

(ii) On reduction of establishment.

(2) Any Asiatic or African non-commissioned officer or constable may be discharged by the Commissioner at any time :—

Discharge of an Asiatic or African non-commissioned officer.

(i) If the Commissioner shall consider that he is unlikely to become an efficient non-commissioned officer or constable.

(ii) When pronounced by a medical officer, designated by the Government to examine him, to be mentally or physically unfit for further service.

(iii) On purchase of discharge, if approved by the Commissioner, at the following rates :—

<i>In the case of an</i>		
<i>Asiatic.</i>	<i>African.</i>	
£6 0 0 ...	£4 0 0	during the first year of service.
£4 10 0 ...	£3 0 0	„ second „
£3 0 0 ...	£2 0 0	„ third or any subsequent year of service.

and, unless at that time he has completed the term of his engagement, he shall also refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing such non-commissioned officer or constable to the Colony.

(iv) When sentenced to be dismissed from the force for misconduct.

(v) On reduction of establishment.

Section 37 subsection (1) is repealed and the following substituted therefor :—

Pension or gratuities on discharge.

37. (1) Sub-inspectors shall be eligible for pension in accordance with the rules from time to time laid down for non-European officials in the service of the Colony, provided that continuous service under this Ordinance shall be deemed to be permanent service for the purpose of such rules.

For the purpose of this subsection, the service of a sub-inspector shall not be deemed to be continuous service if, after receiving a certificate of discharge, he re-engages at a later date for further service, and in such case service previous to that date of such re-engagement shall not be reckoned towards pension.

CHAPTER 37. (PRISONS).

Amendment to sections 2, 10, 22, 44, 63, 75, and 106 by substituting "assistant superintendent" for "gaoler."

Sections 2, 10, 22, 44, 63, 75 and 106 are amended by the deletion of the words " gaoler," " gaolers," wherever they occur in the said sections and the substitution therefor of the words " assistant superintendent," " assistant superintendents ".

Section 7 is repealed and the following substituted therefor :—

Prison officers.

7. Prison officers shall consist of the following :—

Commissioner.

Superintendents.

Assistant Superintendents.

Matrons.

Technical Instructors.

Asiatic and African subordinate officers :—

Chief Warders, 1st Grade.

Chief Warders, 2nd Grade.

Sergeant Warders.

Corporal Warders.

Lance-Corporal Warders.

Warders.

Female Warders.

Technical Instructors.

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Section 55 is amended by the deletion of the words " and all others committed for safe custody only," in lines 1 and 2. Amendment to section 55.

Section 73 is repealed and the following substituted therefor :—

73. Prisoners awaiting trial shall be given all reasonable opportunities of communicating with their friends or legal adviser, and subject to any regulations which may be made under this Ordinance they may write or receive letters. They shall be allowed to see their advocates in the sight, but, as far as possible, out of the hearing of a prison officer, unless for special reasons the superintendent shall order otherwise. Communication with or by prisoners awaiting trial.

CHAPTER 39 (REFORMATORY SCHOOLS).

Section 2 is amended by the deletion of the word " fifteen " and the substitution therefor of the word " sixteen ". Amendment to section 2.

Section 5 subsection (1) is amended by the deletion of the word " two " and the substitution therefor of the word " three ". Amendment to section 5, subsection (1).

Section 6 is amended by the deletion of the word " fifteen " and the substitution therefor of the word " sixteen ". Amendment to section 6.

Section 9 is amended by the deletion of the word " seventeen " wherever occurring and the substitution therefor of the word " nineteen ". Amendment to section 9.

CHAPTER 50 (CUSTOMS TARIFFS).

Table V of the Schedule is amended as follows :—

By the addition of the word " furniture " immediately after the word " flags " in Item 15. Amendment to Table V of the Schedule.

By the addition of the following items :—

62. All goods imported with the sanction of the Governor by Boundary or other Special Commissioners and their assistants for their private use while executing their duties.

63. Works of art, painting, sculpture and the like imported for permanent public exhibition; also works of art which in the opinion of the Commissioner of Customs are of immediate utility for study or models and are capable of contributing to the progress and development of art within the territory.

64. Samples which the Commissioner of Customs shall decide to be of no commercial value.

CHAPTER 52 (NON-NATIVE POLL TAX).

Section 4 is amended by the addition of the following paragraph :—

Tax doubled if not paid within three months.

And provided further that any non-native who fails to pay such tax within three months of the expiry of the period hereinbefore set forth for such payment shall be liable for a tax double the amount of such tax and in lieu thereof, provided always that such liability shall not accrue if such non-native can show that such default was due to causes beyond his own control.

CHAPTER 60 (COTTON TAX).

The following new section is added :—

Exemption of district from application of Ordinance.

6. It shall be lawful for the Governor in Council from time to time by proclamation in the Gazette to exempt any district or districts in the Colony from the application of this Ordinance.

CHAPTER 63 (VAGRANTS).

Amendment to the definition of "vagrant" in section 2.

The definition of "vagrant" in Section 2 is amended by the addition of the following paragraph :—

(d) Any person offering, pretending, or professing to tell fortunes or using any subtle craft, means, or device by palmistry or otherwise to deceive or impose upon any person.

CHAPTER 71 (LIQUOR).

Section 2 subsection (3) is repealed and the following substituted therefor :—

Repeal and re-enactment of section 2, subsection (3).

(3) To any person who is not licensed for the sale of intoxicating liquor for consumption on the premises selling medicated or methylated spirits to persons other than natives.

Section 3 is amended by deleting the definition of "methylated spirits" and by substituting the following definition therefor :—

Repeal and re-enactment of the definition of "methylated spirits" in section 3.

"Methylated spirits" means spirits with which any substance is mixed so as to render the mixture unfit for human consumption as a beverage.

Section 3 is further amended by deleting the definition of "native" and by substituting the following definition therefor :—

Repeal and re-enactment of the definition of "native" in section 3

"Native" means a native of Africa not of European or Asiatic origin, and includes a Somali and a Swahili, and further includes such other classes of persons as the Governor in Council shall by proclamation in the Gazette declare to be natives for the purposes of this Ordinance: Provided that a native of Algeria, Tunis, Morocco, Libya or Egypt shall not be deemed to be a native within the meaning of this Ordinance:

And provided further that where there is any reasonable doubt as to whether any person falls within this definition the burden of proof shall be upon such person.

Section 4 is renumbered as section 4 (1) and the following subsection added thereto :—

(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 authorise sale of methylated spirits.

Section 9 is amended by the addition thereto of the following subsection :—

Addition of a new subsection (14) to section 9.

(14) Railway Restaurant Car Liquor Licence.

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Addition of a
new subsection
(14) to
section 10.

Section 10 is amended by the addition thereto of the following subsection :—

(14) (a) A " Railway Restaurant Car Liquor Licence " shall authorise 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.

Section 24 subsection (1) is amended by the addition of the following words :—

Application for
and granting
of licence.

For the purposes of this subsection 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.

Amendment to
section 44.

Section 44 is amended by the deletion of the words " is an immigrant from a place where the sale of liquor to such person is allowed " and substituting therefor the words "is not a native within the meaning of this Ordinance".

Amendment to
Schedule.

The Schedule is amended by the addition thereto of the following item :—

	For 12 months.	For 6 months.
15. Railway Restaurant Car		
Liquor Licences	... Shs. 300	... Shs. 180

CHAPTER 86 (NAIROBI (RATING OF UNIMPROVED SITE VALUES)).

Amendment to
section 2.

Section 2 is amended :—

(a) By inserting the words " or registered " immediately after the word " actual " appearing in the definition of the word " owner ".

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(b) By adding the following definitions :—

“ Registered owner ” shall mean the person who appears from any Land Registry of the Colony to be the actual owner.

“ The Court ” shall, except where otherwise specially provided, mean the Resident Magistrate’s Court, Nairobi, which shall be a court of special jurisdiction for the purposes of this Ordinance.

“ Land ” shall include crops.

Section 15 is amended :—

Amendment to
section 15.

(a) By inserting the words “ as valued in the Valuation Roll, payable by the owner or owners ” immediately after the word “ land ” therein first appearing ;

(b) By inserting the words “ as valued in the Valuation Roll, payable by the owner or owners,” immediately after the word “ land ” therein last appearing ; and

(c) By adding thereto the following words :—

It shall be no objection to the making of a rate that, at the date on which it is imposed, any part of the period in respect of which it is imposed has elapsed.

Section 16 clause (b) is amended :—

Amendment to
section 16,
clause (b).

(a) By inserting the words “ in the discretion of the Council ” immediately after the word “ or ” therein first appearing, and

(b) By adding thereto the following words :—

Provided that it shall be no objection to the making or publishing of any rate, whether before or after the date of this Ordinance, that such rate is not expressly declared to be payable in one sum.

Section 17 is amended :—

Amendment to
section 17.

(a) In subsection (1) thereof, by the deletion of the figures “ VI,” and by the substitution therefor of the figures “ III,” and

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(b) In subsection (2) thereof by the deletion of the words from the word " Provided " to the end of that subsection, and by the substitution therefor of the following words :—

And it shall be sufficient to describe such owner in the rate-book and in any proceedings to recover a rate as the owner of the property on which the rate is assessed without further description : Provided further that in any proceedings which may be taken for the recovery of any rate, it shall be no objection that the name of the owner, or in the case of a firm, the names of the partners, have not been properly set out, or in the case of a deceased person that the name or names of the executor or executors have not been disclosed.

Amendment to section 22. *Section 22* is amended by adding thereto the following words :—

The Town Clerk shall, as may be necessary from time to time, make any alteration or correction in the names of the owners of property appearing in the rate-book, and shall verify such alteration or correction by his initials.

Amendment to section 24. *Section 24* is amended by the deletion of the words " and in such other mode as it may by resolution direct ".

Section 26 subsection (1) is repealed and the following substituted therefor :—

Rates to be a first charge on property.

26. (1) Subject and without prejudice to the rights of the Crown the rate shall, without registration, be a first charge on the property in respect of which it is assessed, maintainable (unless satisfied) for twelve years from the date of the imposition thereof, whether such date was before or after the date of this Ordinance.

Amendment to section 26, subsection (2).

In subsection (2) thereof by the deletion of the words " the seizure or sale of his property for non-payment by the owner of the rate or rates due in respect of his land has " and by the substitution therefor of the words " threatened disturbance of his rights or interference with the peaceful or beneficial enjoyment of his tenancy shall have ".

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Sections 27, 28 and 29 are repealed, and the following substituted therefor :—

27. (a) If any sum payable in respect of any rate remains unpaid after the date on which it became due, the Council may apply to the court for the attachment and sale of the land charged with such rate, or of any movable property found thereon, or of any movable property wheresoever found belonging to the person liable to pay such rate. Thereupon, the court shall attach such property, and by notice declare its intention of selling any such land or movable property at the expiration of thirty days from the date of such attachment. If at the expiration of such period such rate has not been paid or satisfied, the court shall sell by public auction any such property as shall have been attached as aforesaid. The court fee payable on such application and order shall be five shillings.

Proceedings for recovery of unpaid rates.

(b) Such notice of sale shall be served by the court by publication in one issue of the Gazette, and, where land has been attached under subsection (a) hereof, by affixing a copy thereof on such land. Where the court has reason to believe that, at the time of such application by the Council, the registered owner of such land or his manager, agent or attorney or any person interested in such land as mortgagee or the manager, agent or attorney of such mortgagee, is resident within the municipal area, it may direct the manner of any further service : Provided that, if personal service or service by post shall be made on such registered owner or other person as aforesaid the affixing of such notice on such land shall not be necessary.

Service of notice of sale.

28. Wherever it shall appear that any person liable for a rate under this Ordinance has died or become insolvent, and no notice of the appointment of an executor, administrator, liquidator or receiver has been received, the court shall give such orders for the service of such notice as it shall deem proper.

Court to give orders on death or insolvency.

Section 30 is amended by the deletion of the words " at the rate of seven " and by the substitution therefor of the words " from the date of the notice of sale at the rate of six ".

Amendment to section 30.

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Amendment to section 31. *Section 31 is amended :—*

(a) In subsection (1) thereof by the deletion of the words “ twenty-nine ” and by the substitution therefor of the words “ twenty-seven ”, and by the deletion of the word “ right ” and by the substitution therefor of the word “ property ”, and

Amendment to section 33. (b) In subsection (2) thereof by the deletion of the words “ or right ”.

Section 33 is amended :—

(a) By inserting the words “ by way of mortgage or otherwise ” immediately after the word “ interest ” therein first appearing, and

(b) By adding thereto the following words :—

And such person shall then be entitled to recover the amount so paid by him with all costs and interest from the person or persons liable for the rate.

After Section 33 there shall be inserted the following section :—

Personal attachment on non-payment of rates. 33A. In the event of any land or movable property sold under section 27 not realising the amount of the rate with interest and costs, the Council may apply to the court for a warrant of personal attachment as though on a judgment obtained for a civil debt against the person or persons liable to pay such rate as in manner prescribed by the Civil Procedure Code or by any Ordinance in substitution or amendment thereof.

Section 34 is repealed and the following substituted therefor :—

Stay of sale pending appeal. 34. (1) Any person whose land or movable property has been attached under section 27 of this Ordinance (not being the person liable for the rate on the land charged or a tenant or occupier of such land or of any house, building or tenement on such land) may apply to the court, within fourteen days from the date of publication in the Gazette of the notice of sale under that section, for the removal of such attachment, and the court may thereupon direct a stay of sale in respect of such attachment pending the hearing of such application.

Orders of court. (2) After hearing such applicant and the Council and making such inquiry as it may deem necessary, the court shall, if it be satisfied that :—

(a) The land so attached is not the land charged with the payment of the rate in respect of which it has been attached, or

(b) The movable property so attached is the property of such applicant,

pass an order releasing such land or movable property from attachment.

(3) In the event of the court making such order as aforesaid, it shall not hold the Council liable in costs unless the applicant, prior to making an application as aforesaid, has given notice in writing claiming such land or movable property as his and that the person liable to pay the rate in respect of which it has been attached has no right thereto. Costs.

(4) No appeal shall lie from any order or proceedings under this section, nor shall any party thereto be entitled to institute any other proceedings in respect of any question decided by the court under this section. Appeals.

Section 36 subsection (2) is repealed and the following substituted therefor :—

(2) Wherever the owner of any rateable property dies or becomes insolvent, it shall be the duty of his executor, administrator, liquidator, or receiver to give notice of his appointment to the Town Clerk in writing within six months of the date thereof. Notice of death of owner to be given.

After Section 36 there shall be inserted the following section :—

36A. Notwithstanding any provision in any other Ordinances or applied Acts, the period of limitation assigned under this Ordinance in respect of all rights, claims and obligations thereunder shall be twelve years from the date of the constitution thereof whether such date was before or after the date of this Ordinance. Limitation in respect of rights, claims and obligations under this Ordinance.

Sections 2, 3, 4, 8, 9, 12, 13 and 16 and the Schedule hereto shall be held to operate retrospectively as from the twenty-second day of February, 1921. Retrospective effect.

It shall be no objection or defence to any proceedings for the recovery of unpaid rates that any notice or publication required under this Ordinance is in any manner defective in form.

The Schedule is repealed and the following substituted therefor :— Repeal and re-enactment of Schedule.

SCHEDULE.

ATTACHMENT, SALES, ETC.

1. The notice issued under section 27 shall be in Form I hereto.

2. The warrant of attachment issued under section 27 shall be in the Form II hereto.

3. The attachment of land shall be made by the attaching officer by affixing a copy of the warrant of attachment to a conspicuous part of such land.

4. The attachment of movable property shall be made by the attaching officer by the actual seizure thereof. He shall forthwith make an inventory of such property and shall arrange for and be responsible for the safe custody thereof.

5. When the movable property attached is of a perishable nature or when the expenses of keeping it in custody will exceed its value, it may be sold at once by the attaching officer.

6. The expense and the maintenance of livestock and the custody of movable property, while under attachment, shall be costs of the attachment.

7. The attaching officer may, if he thinks desirable, advertise, in such manner as he shall think fit, any sale to be held under these rules, and any expenses incurred in so doing shall be costs of the sale.

8. No officer of the Council nor any person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in any property sold at such sale.

9. A sale may be adjourned by the attaching officer to any specified day and hour as he shall so deem fit. Every such sale shall be stopped if the sum due and costs (including the costs of sale) are tendered to the attaching officer at any time before the completion of such sale.

10. On the sale of movable property the price of each lot shall be paid for by the purchaser to the attaching officer at the time of the sale, or as soon thereafter as such officer directs; in default of such payment such property shall forthwith again be put up for sale. On payment of the purchase price such officer shall give a receipt for the same to the purchaser of such property.

11. (a) On the sale of the land the person declared to be the purchaser thereof shall pay, immediately after such declaration, a deposit of twenty-five per cent. of the amount of the purchase price to the attaching officer, and in default of such deposit such land shall forthwith again be put up for sale.

(b) The balance of such purchase price shall be paid by the purchaser to the court on or before the fifteenth day after such sale, or, if the fifteenth day be a Sunday or other holiday, then on the first day following such Sunday or other holiday.

(c) In default of such payment within the period mentioned above, the deposit, after defraying the expenses of such sale, shall be forfeited to the Government and such land shall again be put up for sale, and the defaulting purchaser shall forfeit all claim to such land and to any part of the sum for which it may subsequently be sold.

12. The sum to be deducted from the proceeds of the sale, besides the sum due to the Council, shall be the costs incurred up to the time of sale.

13. In the case of a sale of land, on payment of the purchase price, the court shall make an order as provided in section 55 of the Registration of Titles Ordinance, preferring the purchaser as proprietor of such land or interest therein sold to him, and he shall forthwith be put in possession of the purchased property, the aid of the police being afforded if needful.

FORM I.

NOTICE OF SALE.

Whereas the sum of S.....
being arrears, interest and costs recoverable under the Nairobi
(Rating of Unimproved Site Values) Ordinance, and all amend-
ments thereof, is due to the Council as the rate for the
year.....charged on the land Plot No....., Nairobi,
of which the registered owner is.....
and whereas the said sum has not been paid :

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Notice is hereby given that, at the expiration of thirty days from the date of this notice, the court will proceed to sell by public auction the property described at the foot hereof and all persons are hereby warned against alienating or receiving such property in any manner whatsoever.

Given under my hand this.....day of.....
19.....

.....
Resident Magistrate.

Description of Property :

FORM II.

WARRANT OF ATTACHMENT.

To

.....

Whereas the sum of S.....
being arrears, interest and costs recoverable under the Nairobi
(Rating of Unimproved Site Values) Ordinance, and all
amendments thereof, less sums recovered (as noted in the
margin hereto), is due to the Council as the rate for the
year.....charged on the land Plot No....., Nairobi,
whereof the registered owner is.....
and whereas the said sum of S..... has not been
paid :

Rate for 19.....	
Interest thereon	
Arrears for.....years viz., 19..... to 19.....	
Attachment Fees S.....	
Less recovered to account	
Total S ...	

THESE ARE TO COMMAND
you to attach and at the
expiration of thirty days
from the date hereof to
sell by public auction the
property described at the
foot hereof unless the
said sum of S.....
together with the costs
of this attachment, be
paid before such sale.

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You are further commanded to return this warrant on or before the.....day of.....19..., with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

Given under my hand at.....this.....day of.....19....

.....
Resident Magistrate.

Description of property :

FORM III.**RATE BOOK.**

A rate of.....per centum under the provisions of the Nairobi (Rating of Unimproved Site Values) Ordinance, and all amendments thereof, imposed by the Council, on theday of.....19..., for the period.....19..., payable in.....equal instalments on the.....

1	2	3	4	5	6	7
No. on Roll.	Registered Owner.	Description and Situation of Property.	Rateable Value.	Rate at%	By whom Rate Paid.	Date of Payment.

Signed by us, with the corrections initialled, this.....day of.....19...

A. B. }
C. D. } *Members of the Municipal Council.*

(N.B.—The two last columns will appear in blank when the rate-book is signed, and will be filled in from time to time as the rates are paid.)

CHAPTER 87 (CUSTOMS).

Amendment to Section 100. *Section 100* is amended by the addition of the words " imported in bulk or " after the word " liquids " in the said section.

After *Section 157* the following section is added :—

Samples and specimens, etc., to be admitted free of duty subject to the payment of a deposit, etc.

157A. Notwithstanding anything contained in sections 156 and 157, samples and specimens, provided they are not of such quantity and value that, taken as a whole, they no longer constitute samples in the usual sense, and articles imported for repair, which are liable to import duty, and the importation of which is not prohibited, may, when imported by merchants, traders or commercial travellers, be temporarily admitted free of duty, subject to such conditions and subject to the amount of import duties being deposited or secured in such manner as the Commissioner of Customs may prescribe.

CHAPTER 88 (INVENTIONS AND DESIGNS).

Section 4 is repealed and the following substituted therefor :—

Time of application for registering a patent by the grantee.

4. Any person being the grantee of a patent in the United Kingdom or any person deriving his right from such grantee by assignment, transmission or other operation of law may apply within three years from the date of the issue of the patent to have such patent registered in the Colony. Where any partial assignment or transmission has been made all proper parties shall be joined in the application on registration.

Section 6 is repealed and the following substituted therefor :—

Procedure for registration.

6. Every application for the registration of a patent or design under this Ordinance shall be made to the Registrar, and shall be accompanied :—

(a) In the case of a patent, by :—

(1) Two certified copies of the specification or specifications (including drawings, if any) of the United Kingdom patent; and

(2) A certificate of the Comptroller-General of the United Kingdom Patent Office giving full particulars of the issue of the patent on such specification or specifications.

(b) In the case of a design, by :—

(1) Two copies of any drawing in relation to the design ;

(2) Two exact representations or specimens of the design ; and

(3) Two certified copies of the United Kingdom certificates of registration.

Section 8 is hereby renumbered 8 (1), and the following subsection added thereto :—

(2) Privileges and rights so granted shall have effect Date of effect.
from the date of the United Kingdom patent or certificate of registration of design, as the case may be.

After *Section 17* the following sections are added :—

18. Whenever the specification or drawings of an United Disclaimers, etc
Kingdom patent registered in the Colony has been amended by way of disclaimer, correction or explanation, according to the law of the United Kingdom, a request, accompanied by a copy of the specification and drawings (if any) as amended, duly certified by the Comptroller-General of the United Kingdom Patent Office, may be made to the Registrar to substitute a copy of the specification and drawings as amended for the specification and drawings originally filed.

19. Where a person becomes entitled by assignment, Assignments, etc
transmission or other operation of law to the privileges and rights conferred by a certificate of registration under this Ordinance or to any interest therein, he may make application to the Registrar for the entry on the register of such assignment, transmission or other instrument affecting the title or giving an interest therein.

The Registrar shall, on sufficient evidence thereof, and Extensions and revocations, etc
on payment of the prescribed fee, enter the same in the proper register in the prescribed manner and shall endorse the same on the certificate of registration.

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Inspection of
registered
designs.

20. All extensions and revocations of any patent or design registered under this Ordinance shall be notified to the Registrar, who shall, on sufficient evidence thereof and on payment of the prescribed fee, enter the same in the proper register in the prescribed manner, and shall endorse the same on the certificate of entry referring to such patent or design. The Registrar shall, on payment of the prescribed fee, cause a copy of such entry to be inserted in the Gazette.

Inspection of
and extracts
from register.

21. During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the Registrar or by the court, and furnishing such information as may enable the Registrar to identify the design, nor except in the presence of the Registrar or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof.

Design of
which copyright
ceased.

22. When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

23. Every register kept under this Ordinance and the specification of every registered patent shall be open to the inspection of the public on payment of the prescribed fee, subject to the provisions of this Ordinance, and to the rules made thereunder. Certified copies sealed with the seal of the Registrar of any entry in such register or of any such specification, shall be given to any person requiring the same on payment of the prescribed fee: Provided that whenever any specification or extract includes any tracing, drawing, or diagram, an additional fee for any copy thereof shall be paid equal to the cost of preparing such tracing, drawing, or diagram.

Power for
registrar to
correct clerical
errors.

24. The Registrar may, on request in writing, accompanied by the prescribed fee:—

(a) Correct any clerical error in or in connection with an application for a patent, or for registration of a design; or

(b) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, or design.

CHAPTER 92 (BUSINESS NAMES REGISTRATION).

Section 5 subsection (1) is amended by the addition thereto of the following clauses :—

Amendment to
section 5,
subsection (1).

(i) Where the registration to be effected is that of a firm, the age of each partner thereof;

(j) Where the registration to be effected is that of an individual, the age of such individual :

Provided that where any such partner or individual is of or over the age of twenty-one years it shall be sufficient for him to state his age as " full age ".

CHAPTER 98 (AGRICULTURAL PRODUCE
(INSPECTION)).

After Section 10 the following new section is added :—

10A. (1) Where produce is delivered to the administration of the Kenya and Uganda Railway to be block-stacked it shall be lawful for the said administration to make such charges, rules, regulations and conditions as it may deem fit for the block-stacking of produce by it.

Power to make
charges, etc.

(2) Save as provided by subsections (3) and (4) of this section, when produce is block-stacked the administration of the Kenya and Uganda Railway shall, after reasonable notice, deliver to the person entitled thereto the same number of bags of produce of the same grade and quality as that person or his assignor shall have delivered to the said administration to be block-stacked, but it shall not be necessary for the said administration to deliver to any person the identical produce which it received from him or from his assignor.

Method of
delivery.

(3) It shall be lawful for the Agricultural Department to regrade produce prior to shipment after it has been received in block-stack.

Incidence of
loss on
deteriorated
produce.

When, on regrading, produce is found to have deteriorated the inspector shall apportion any resultant loss among the persons who have left produce of that grade in block-stack in such proportion as he may consider to be fair and reasonable, having special regard to the period during which an owner has held produce in block-stack as shown by the books of the Kenya and Uganda Railway administration, and such loss shall be borne by the person or persons to whom it has been apportioned. The produce so found to have deteriorated may be removed to the place allotted to the storage of produce of the quality to which it has deteriorated :

Provided that if the regraded produce does not fall within any of the prescribed grades or within any of those classes of produce for which an inspection certificate may be issued, it shall be lawful for the inspector to sell, destroy, or otherwise dispose of the said produce and apply the nett amount realised (if any), firstly, in defraying any charges which may be due to the administration of the Kenya and Uganda Railway for storing the said produce; and secondly, in crediting the balance to the person or persons entitled to credit under subsection (4) of this section.

Disposal of
deteriorated
produce.

(4) When produce has been removed from a block-stack of one grade to a block-stack of a lower grade, as provided by the last subsection, the administration of the Kenya and Uganda Railway shall enter in the stock-book a debit to the person or persons upon whom the loss due to deterioration has fallen, of the number of bags of produce standing to his or their credit in the block-stack of the grade in which the deterioration is found to have occurred, and shall credit that person or those persons with an equivalent number of bags of produce in the block-stack to which the deteriorated produce has been removed.

Amendment of
receipts.

(5) When the procedure prescribed by the last subsection has been complied with, any receipt or certificate issued on the receipt of the produce for block-stacking shall be deemed to be amended accordingly.

Notification
after regrading.

(6) Notification as to alteration of grade (if any) on regrading carried out under subsection (3) of this section shall be posted by the inspector to the owner or owners of the produce so regraded as soon as possible on completion of regrading.

CHAPTER 113 (PUBLIC TRAVEL AND ACCESS ROADS).

Amendment of
section 3,
subsection (4).

Section 3 subsection (4) is amended by the insertion of the words " other than an existing member thereof " immediately after the word " person ".

Amendment of
section 6.

Section 6 is amended by the deletion of the words " and of all decisions of the district boards ".

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Section 7 is amended by the deletion of the word " Governor " and by the substitution therefor of the words " Head of the Department concerned ". Amendment of section 7.

Section 8 is repealed and the following substituted therefor :—

8. Whenever it is made to appear to the Governor that requirements exist for the establishment, alteration, or cancellation of a line of public travel, or for the conversion of a road of access into a line of public travel, the Governor may, by order published in the Gazette, dedicate a line of public travel which shall be clearly described in such order, and from such date of publication such line of public travel shall be absolutely dedicated to the public as a public road within the meaning of any law now or hereafter in force. Such public road shall be of such width as the Governor shall direct in the order. Before making and publishing such order as aforesaid the Governor shall where there is a district road board, call upon such board to investigate and report upon the necessity for or desirability of such line of public travel and the best alignment in the general direction required. Line of public travel.

Sections 9 and 10 are repealed.

Repeal of sections 9 and 10.

Section 11 is amended :—

Amendment of section 11.

(a) By the deletion of the word " any " where it appears immediately before the words " public road " and by the substitution of the word " a ";

(b) By the deletion of the word " convenient " and by the substitution therefor of the word " reasonable ";

(c) By the insertion of the words " made in duplicate " between the words " shall be " and the words " in the form ";

(d) By the deletion of the words " the schedule " wherever appearing therein and by the substitution therefor of the word and figure " Schedule I ";

(e) By the deletion of the word " or " wherever that word appears therein between the words " sketch " and " plan "; and

(f) By the deletion of the word " or " where occurring for the second time and the substitution therefor of the words " which is passable for vehicular traffic or to a ".

Amendment of section 12. *Section 12* is amended :—

(a) By the deletion of the words “ in the manner prescribed in subsection (3) of section eight hereof upon the holder or holders ” and the substitution therefor of the words “ by personal service or by registered post to the last known address of the owner or occupier ”;

(b) By the deletion of the word “ constructed ” and by the substitution therefor of the word “ granted ”; and

(c) By the addition thereto of the following proviso :—

Provided that, before the service of such notice, if the chairman of the district board shall satisfy himself, in such manner as he may deem necessary, that the applicant has reasonable access to a public road which is passable to vehicular traffic or to a railway station or halt, he shall lay such application, together with his report thereon, before the next meeting of the district board for consideration. In the event of the district board confirming such report no such notice shall be served : otherwise, the notice shall be served in the manner prescribed.

Amendment of section 13, subsection (1) *Section 13 subsection (1)* is amended :—

(a) By the deletion of the word “ interested ” and by the substitution therefor of the words “ who might be affected thereby ” and

(b) By the insertion of the words “ in writing in the form prescribed in Schedule II to this Ordinance ” after the word “ order ”.

Amendment of section 14, subsection (1). *Section 14 subsection (1)* is amended by the deletion of the word “ constructed ” and by the substitution therefor of the word “ granted ”.

Section 14 subsection (3) is repealed and the following substituted therefor :—

Applicant's liability.

(3) The applicant shall at all times maintain the said road of access in a good and efficient state of repair to the satisfaction of the district board, and, for the purpose of such maintenance, the applicant, his servants or his agents shall have leave to enter at all times upon the said road of access :

Provided always, that as little damage or inconvenience as possible shall be caused by such entry to the owner or occupier of the land over which the said road of access passes, and that such right of entry shall be subject to such conditions as the district board may impose in granting the order for constructing the said road of access :

Provided further that if any owner or occupier of land over which the said road of access passes shall use such road, then and in such case, he shall pay a proportionate share towards the maintenance of that portion of the road so used by him :

Provided further that if any other person shall regularly use the said road of access it shall be competent for not less than half the number of persons liable at that time for the maintenance of such road as aforesaid to apply to the district board to call upon such other person by notice to show cause, on a date not less than one month from the date of such notice, why he should not pay a proportionate share towards the maintenance of that portion of the road so used by him, and the district board shall thereafter make such order as it shall think fit and proper in the circumstances.

The proportionate share aforesaid to be paid shall be fixed by the district board with due regard both to the extent of road used and the nature and amount of traffic likely to pass thereover.

Section 15 is repealed and the following substituted therefor :—

15. It shall be competent for a district board for sufficient cause to order the cancellation or alteration of the alignment of a road of access, provided that due notice shall have been previously given to any person who might be affected by such order.

Power of district board to cancel or alter a road of access.

Section 16 is hereby amended by the deletion of the words " Provided that nothing in this section shall prejudice the rights of an applicant for the road of access for all purposes."

Amendment to section 16.

Section 17 is repealed and the following substituted therefor :—

17. (1) An appeal from an order of a district board shall lie to a subordinate court of the first class.

Appeal.

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Time of appeal. (2) Every such appeal shall be entered within thirty days of the date of such order.

Amendment of section 18. *Section 18* is amended by the insertion of the word " election " immediately after the word " powers ".

Section 19 is repealed and the following substituted therefor :—

Penalties. 19. (1) Any person contravening any of the provisions of this Ordinance or refusing or wilfully failing to comply with the lawful order of a district board shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both.

Cognisance of offences. (2) No court shall take cognisance of an offence of refusing or wilfully failing to comply with the lawful order of a district board except under the complaint of the chairman of such board or of any person authorised by him for such purpose.

Repeal and re-enactment of the Schedule. *The Schedule* is repealed and the following Schedules substituted therefor :—

SCHEDULE I.

**FORM OF APPLICATION FOR LEAVE TO CONSTRUCT A
ROAD OF ACCESS.**

1. Name of applicant.
Place of abode.
Nationality.

2. Name, situation of land in respect of which such road of access is required : stating province, district, Land Office number, and all particulars which may assist in locating same.

3. Name of public road, railway station or halt to which such road of access is required.

4. Name or names of land or lands over which it is proposed to construct such road of access together with the name or names of the respective owner or owners thereof.

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5. The means of access (if any) to any public road, railway station or halt at present available for the use of the applicant, and whether use of same is subject to any payment or other terms or conditions.

6. Whether any crops or buildings will be damaged or destroyed by the construction of such road of access.

If so, to what extent?

7. Maximum width between drains of proposed road of access.

8. Any other facts of which you are aware which may affect the grant.

.....
Applicant.

NOTE.—This application must be submitted in duplicate and must be accompanied by a sketch plan in quadruplicate showing approximately the course and direction of the proposed road of access and the present means of access (if any) to a public road, railway station or halt.

SCHEDULE II.

**FORM OF ORDER GRANTING LEAVE TO CONSTRUCT A
ROAD OF ACCESS.**

It is hereby notified that the.....district road board hereby grants the application for a road of access from Farm L.O. No.....submitted by.....on the.....19.....upon the following conditions:—

(1) The alignment of the road to be as shown on the enclosed sketch plan traversing Farms L.O. Nos.....

.....
to the.....road (or railway station or halt).

(2) The width of the road to be not exceeding.....feet.

(3) Compensation to be paid to.....

.....
in respect of.....
at the rate of.....
to the amount of.....

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(a), (b) or (c)
to be used as
required.

(4) (a) The alignment of the road of access hereby granted in no part traverses an already existing fenced enclosure.

(b) The alignment of the road of access hereby granted passes through the following already fenced enclosures namely, L.O. Nos.....but the.....district road board makes no order as to the fencing of the said road of access in whole or in part.

(c) The alignment of the road of access hereby granted passes through the following already fenced enclosures, namely L.O. Nos.....and thedistrict road board orders that the said road of access shall be fenced in the following manner and to the following extent.....and apportions the cost of such fencing in the following manner :—

Here quote
specification of
type of fencing
to be erected
and extent and
locality of such
fencing,
including gates
(if any).

(5) The cost of construction and maintenance of the road of access hereby granted is apportioned in the following manner :—

Here insert
other conditions
(if any).

(6)

Chairman.

District Road Board.

No. VII. Revised Edition of Laws (Operation)**1926.****CHAPTER 118 (WIRELESS TELEGRAPHY).**

Section 6 subsection (1) is amended by the deletion therein of the word "merchant" whenever occurring and by the addition of the following clause:—

(vi) Regulations similar to those made under paragraphs (iii), (iv) and (v) of this subsection may also be made in regard to aircraft.

CHAPTER 129 (NATIVE AUTHORITY).

Section 13 is amended by the deletion of the words "native council" wherever they appear therein, and by the substitution therefor of the words "council of elders".

Amendment to
section 13.

After *Section 19* the following sections are added:—

20. The Governor in Council may establish a council in any area which may be a district or part of a district in the Colony, to be known as a Local Native Council, which shall be composed of the district commissioner and the assistant district commissioners (if any) of such district together with such headmen and other natives as the Governor may appoint thereto:

Power to
establish
Local Native
Councils.

Provided that before any person other than an official headman is so appointed the natives of the area shall be given an opportunity to nominate any suitable persons, who may or may not be headmen, to represent their interests and a complete list of persons so nominated shall be submitted to the Governor together with the recommendation of the district commissioner.

21. Appointments of native members of local native councils shall ordinarily be for a period of three years but shall be terminable at the Governor's pleasure.

Period of
appointments.

22. The district commissioner shall be the president of a local native council, and in his absence the senior assistant district commissioner present shall preside over such council.

President of
Council.

23. A local native council shall meet at intervals of not more than three months, at such place and at such time as the president thereof shall determine. The president shall cause minutes of each meeting to be recorded.

Meetings of
Council.

No. VII.*Revised Edition of Laws (Operation)***1926.**General powers
of Council.

24. (1) A local native council may make and pass resolutions for the welfare and good government of the native inhabitants of such area in respect of any matters affecting purely local native administration and particularly the following :—

- (a) The provision, maintenance and regulation of :—
 - (i) Food and water supplies,
 - (ii) Forests,
 - (iii) Outspans,
 - (iv) Cattle dips,
 - (v) Roads, bridges and culverts.
- (b) Public health;
- (c) The use of land;
- (d) Any purpose provided in section eight of this Ordinance;
- (e) Education;
- (f) Markets and market dues;
- (g) Agriculture and livestock.

(2) Any such resolution may require such inhabitants to do or to abstain from doing any act therein specified.

Special power
of Council

25. (1) A local native council may, before the first day of December in each year, make and pass a resolution for the imposition of a rate, to be levied on and collected from the native inhabitants of the area during the ensuing year.

(2) Such rate shall be known as the local native rate, and shall be of such amount and paid in such manner as may be prescribed by such resolution.

(3) Payment of such rate which is made otherwise than by legal tender may be so converted by such local native council.

Resolutions of
Council to be
submitted to
Governor in
Council.

26. (1) Every resolution passed under sections twenty-four and twenty-five shall be submitted to the Governor in Council together with a copy of the minutes relating thereto.

(2) When any such resolution has been approved by the Governor in Council, any native affected thereby who shall refuse, neglect or fail to comply therewith shall be guilty of an offence and shall on conviction before a magistrate or before a native tribunal having jurisdiction over such native be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment of either description for a term not exceeding two months.

(3) Such imprisonment or fine shall not operate as a satisfaction or extinguishment of any local native rate or other monies payable under this Ordinance.

(4) It shall be the duty of the district commissioner to notify each headman of the approval of the Governor to any resolution of the local native council affecting the natives living within the local limits of the jurisdiction of such headman, and such headman shall thereupon take steps to make such resolution and the approval thereof known to such natives.

27. A local native council may establish a fund, to be known as the Local Native Fund, which shall consist of :—

(a) All local native rates collected under the provisions of this Ordinance,

(b) With the approval of the Governor, monies subscribed by the native inhabitants of the area (or any part thereof) for their common benefit, and

(c) Any other monies which may lawfully be paid into such fund.

28. All monies payable to a local native fund shall be received by the district commissioner of the area or by any other person authorised by him in that behalf. Receipt of monies for council's fund.

29. The accounts of local native funds shall be kept in such manner as the Governor may prescribe, and shall be subject to audit by the auditor of the Colony. Council's accounts.

30. A local native fund shall be devoted only to such purposes as may be prescribed by any resolution which has been approved by the Governor under section twenty-six. Disposal of council's funds.

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Council's annual
statement of
accounts.

31. An annual statement showing the summary of the receipts and expenditure of every local native fund established under the provisions of this Ordinance shall be laid on the table of the Legislative Council as soon as may be after the close of the accounts of the year.

Power to make
rules.

32. The Governor in Council may make rules for the better carrying into effect of the provisions of this Ordinance.

CHAPTER 131 (NATIVES' TRUST FUND).

After *Section 9* the following new section is added :—

Payments into
local native
funds.

10. (1) The Governor in Council may direct that the trustees shall pay into any specified local native fund any specified monies in the hands of the trustees and thereupon the trustees shall pay such monies into such local native fund and the receipt of the local native council administering such fund shall be a complete discharge to the trustees in respect of such monies.

(2) The Governor in Council may direct that any monies which may lawfully be paid into the fund under the provisions of section six hereof shall in lieu of being so paid be paid into a local native fund.

CHAPTER 139 (THE EMPLOYMENT OF NATIVES).

Amendment to
section 2.

Section 2 is amended by the insertion after the words " Uganda Protectorate " of the words " or in Tanganyika Territory ".

After *Section 3* the following section is added :—

Employer and
servant may
enter into a
contract for
performance of
thirty days'
work within a
period of
forty-two days.

3A. Notwithstanding anything contained in section 3 subsection (2) of this Ordinance, it shall be competent for an employer and a servant to enter into a contract of service either orally or in writing, for the servant to work for the employer for thirty days (in succession or otherwise at the election of the employer) and in such cases :—

(a) The employer shall provide work for the servant for such number of days ;

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(b) The employer shall provide food for the servant or payment in lieu thereof during the continuance of the contract, except for days on which the servant is absent from his place of employment without lawful cause or mutual consent of parties;

(c) It shall not be necessary, if the contract be in writing, to comply with any of the formalities prescribed by this Ordinance for a written contract;

(d) The contract shall be known as a " thirty days contract " and shall not extend beyond a period of forty-two days from the making thereof.

After *Section 6* the following section is added :—

6A. Notwithstanding anything contained in clause (a) of section six of this Ordinance it shall be competent for an employer and a servant to enter into a contract of service in writing, for the servant to work for the employer within a specified calendar period not exceeding one year (or where the Governor has, by notice in the Gazette, so approved for any class of skilled work, two years), for a definite number of days (in succession or otherwise at the election of the employer), and in such case :—

Employer and servant may enter into a special contract for a definite number of days work in a period not exceeding two years.

(a) The employer shall provide work for the servant for such definite number of days;

(b) The employer shall provide food for the servant or payment in lieu thereof during the continuance of the contract, except for days on which the servant is absent from his place of employment without lawful cause or by mutual consent of parties;

(c) The contract shall be known as a " special contract ";

(d) In all such contracts the number of days for which the servant engaged to work and for which the employer engaged to provide work shall be not less than five-sevenths of the total number of days of the duration of the contract.

Section 18 is amended by the deletion of the word " three " and by the substitution therefor of the word " five ". Amendment to section 18.

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Amendment to section 41. *Section 41 is amended by the deletion of the following words :—*

And every such magistrate shall have jurisdiction in any such case brought before him against any person being at the time within the area of his jurisdiction, whether the grounds of such case arose within such area or not or whether the person against whom such case is brought has his usual residence or place of abode within such area or not.

Amendment to section 48, subsection (5). *Section 48 subsection (5) is amended by the deletion of the following words :—*

Any offence against this subsection shall be a cognizable offence and a police officer may arrest without warrant any person accused of such an offence.

Repeal and re-enactment of section 68, subsection (6) (a). *Section 68 subsection (6) (a) is repealed and the following substituted therefor :—*

(6) (a) To institute proceedings in respect of any offence committed by an employer against any of the provisions of this Ordinance, or of any Ordinance amending the same and to prosecute and appear in his own name in respect of the same; or

CHAPTER 153 (COCONUT INDUSTRY).

Section 7 is repealed and the following substituted therefor :—

Power to arrest. 7. Any person found so loitering or lurking without lawful excuse on any plantation may be arrested by the owner of the plantation or his agents or servants and may be detained in custody by them :

Provided that he shall with all practicable speed be either handed over to the police or brought before a magistrate and shall not be detained without a warrant longer than is necessary.

Repeal of sections 8, 9 and 10. *Sections 8, 9 and 10 are repealed.*

Amendment to section 16. *Section 16 is amended by the deletion of the word " under " and the substitution therefor of the words " against the provisions of section four and section eleven of " and the deletion of the words " or any rules thereunder ".*

CHAPTER 161 (GAME).

Section 12 is repealed and the following substituted therefor :—

12. (1) When any animal mentioned in any of the schedules hereto is captured or killed in contravention of this Ordinance such animal or the trophies of such animal shall belong to Government.

Animals killed in contravention of this Ordinance or by accident, or found dead, the property of Government.

(2) When any animal mentioned in any of the schedules hereto or any part of such animal is found, the trophies of such animal or of such part of the animal shall belong to Government.

(3) When any animal mentioned in any of the schedules hereto is killed by any person in self-defence, or by accident, or in error, the trophies of such animal shall belong to Government, unless the person killing such animal is in possession of a licence the conditions of which entitled him to kill that animal.

(4) Any person not being in possession of the appropriate licence, killing such animal in self-defence, or by accident, or in error, shall report at once to the nearest district commissioner, game warden or police officer and shall hand in such of the trophies as may be required by the Governor. Failure to comply with the provisions of this subsection shall be an offence against this Ordinance.

(5) Any person removing any trophy the property of Government with the intention of depriving Government of the same, shall be guilty of an offence against this Ordinance.

(6) The Governor may waive the right of Government in respect of any animal or any trophy as he may deem fit.

(7) The Governor may direct the payment of such compensation as shall cover the cost of transport of any trophy to the nearest Government station in any case as he may deem fit.

(8) The Governor may by proclamation published in the Gazette authorise the payment to persons finding ivory of rewards calculated in such manner and subject to such conditions as shall be specified in such proclamation.

Section 33 is amended by inserting after the words " sections four and twenty-four of this Ordinance " the words " except with the consent in writing of the game warden ".

Amendment to section 33.

CHAPTER 163 (FISH PROTECTION).

Amendment to
section 5.

Section 5 is renumbered 5 (1) and is hereby amended by the deletion therefrom of the words " any species of fish " and the substitution therefor of the word " trout ".

Section 5 is further amended by the addition thereto of the following subsection :—

Governor may
direct applica-
tion of funds.

(2) If the Governor shall consider at any time that any amount previously paid under the provisions of subsection (1) hereof has not been properly applied by the Kenya Angling Association for the purposes therein specified it shall be lawful for him to direct the Treasurer to deduct such amount from any future payments or to withhold any future payments till such time as the aforesaid association shall satisfy the Governor that such payments will be properly applied.

CHAPTER 165 (ELECTRIC POWER).

Amendment to
section 2.

Section 2 is amended by the deletion of the words " which shall have been approved by the Governor " in the definition of " Special agreement ".

Amendment to
section 17,
subsection (1).

Section 17 subsection (1) is amended by the deletion of the words " and approved of in writing by the Governor " in the third and fourth lines thereof.

Amendment to
section 32,
subsection (1).

Section 32 subsection (1) is amended by the deletion of the words " and approved of in writing by the Governor " in the third and fourth lines thereof.

Amendment to
section 42.

Section 42 is amended by the deletion of the word " such " where it first occurs in the proviso to the said section.

Repeal of
section 137.

Section 137 is repealed.

CHAPTER 170 (DIVORCE).

Section 2 is repealed and the following substituted therefor :—

Limitations of
Ordinance.

2. Nothing hereinafter contained shall authorise :—

(1) The making of any decree of dissolution of marriage unless the petitioner is domiciled in the Colony at the time when the petition is presented;

No. VII. Revised Edition of Laws (Operation)**1926.**

(2) The grant of any other relief under this Ordinance, unless one of the parties to the suit has, at the time when the petition is presented, his or her usual residence in the Colony or unless the marriage was solemnised in the Colony.

Section 3 is amended as follows :—

(a) By the deletion of the definition of " Africa ".

Amendment to
section 3.

(b) By the insertion of the following definition :—

" Marriage " means the union of one man and one woman for life to the exclusion of all others : Provided that such union may be dissolved in accordance with the provisions of this Ordinance.

Section 5 subsection (2) is repealed and the following substituted therefor :—

Repeal and
re-enactment of
section 5,
subsection (2).

(2) A wife may apply by petition to the court for the dissolution of her marriage on the ground that since the solemnisation thereof and since the passing of this Ordinance her husband has been guilty of adultery or of rape or of sodomy or of bestiality :

Provided that nothing in this section shall take away any right which may be possessed by a wife immediately before the passing of this Ordinance.

Section 13 subsection (1) (a) is amended by the deletion of the words " the respondent " and the substitution thereof of the words " either party ".

Amendment to
section 13, sub-
section (1) (a)

Section 21 is amended by the insertion of the following subsection :—

Amendment to
section 21.

(4) If the respondent shall fail to comply with a decree of the court for restitution of conjugal rights such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a decree of judicial separation may be pronounced although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights.

Judicial
separation

THIRD SCHEDULE.

CHAPTERS REPEALED.

- Chapter 13. (Administrator General).
,, 15. (Native Estates Administration).
,, 70. (Arms).
,, 80. (Witchcraft).
,, 81. (Trespass).
,, 132. (Resident Natives (Squatters)).
,, 148. (Mining).
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No. 8 OF 1926.

Amended
36/31**An Ordinance to make Provision for the
Protection of Game Birds.**

[1ST JULY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as "the Game Birds
Protection Ordinance, 1926." Short title.

2. In this Ordinance, and, unless any other interpretation
be therein assigned to them, in all rules, proclamations and
notices made or issued thereunder, the following terms shall
be respectively interpreted as follows:— Interpretation

"Administrative officer" includes a Senior Commissioner,
Resident or District Commissioner, and Assistant Resident or
District Commissioner.

"Authorised officer" includes any administrative officer
and any Magistrate, Game Warden, Assistant Game Warden,
Honorary Game Warden and European police officer.

"Game bird" means any bird mentioned in the Schedule

"Game Warden" means the officer for the time being in
charge of the Game Department.

"Trophy" includes any portion of any game bird and the
egg of any such bird.

3. Save as permitted by this Ordinance, no person shall
hunt, kill, capture or possess any game bird mentioned in the
Schedule to this Ordinance or possess any trophy. Prohibition of
unauthorised
hunting and
possession.

4. The Governor may by proclamation declare that the
name of any species or variety of any bird shall be added to
the Schedule, or remove the name of any species or variety
of any bird from the Schedule, or may alter the number of
birds of any species or variety mentioned in the Schedule which
may be hunted, killed, or captured under a licence issued as
provided under this Ordinance, and may apply such proclama-
tion to the whole of the Colony or any province, district, or
other area thereof. Power of
Governor to
vary Schedule.

Power of
Governor to
proclaim close
seasons.

5. The Governor may by proclamation, referring to the whole or to any specified part of the Colony, declare that during any specified period, which shall be known as a close season, it shall be an offence to hunt, kill, or capture game birds or any specified game bird without the written authority of the Game Warden. Any person who shall, within the period specified in any such proclamation, hunt, kill, or capture game birds or any specified game bird shall be guilty of an offence against this Ordinance.

Prohibition of
sale or
purchase of
game birds or
trophies.

6. Notwithstanding anything to the contrary contained in this Ordinance, no person shall, without the written permission of the Game Warden, sell or purchase or offer or expose for sale any game bird, alive or dead, or any trophy.

Onus of proof
to be on person
charged with
unlawful
possession of a
game bird
or trophy.

7. Whenever any person is charged with hunting, killing, capturing or possessing any game bird, alive or dead, or possessing any trophy in contravention of this Ordinance, it shall be sufficient if the summons or charge shall allege that the bird or trophy was obtained in contravention of law, and the onus shall then be on the person accused to produce satisfactory proof that the bird or trophy was lawfully obtained under a licence granted under this Ordinance.

Prohibition
against taking
or destroying
the eggs of
game birds.

8. Any person who, without the written permission of the Game Warden, hunts, kills, or captures game birds by means of traps, nets, snares, bird-lime or poison, or who has in his possession for the purpose of killing or capturing game birds any of such appliances, shall be guilty of an offence against this Ordinance.

Prohibited
methods of
hunting game
birds.

9. No person shall, without the written consent of the Game Warden, take or destroy the eggs of any game bird.

Power of
Governor to
prohibit unduly
destructive
methods of
killing

10. When it appears to the Governor that any method, otherwise lawful, employed in hunting, killing or capturing game birds is likely to prove unduly destructive, he may by proclamation prohibit such method or prescribe the conditions in which such method may be employed. Any person contravening the provisions of any such proclamation shall be guilty of an offence against this Ordinance.

No. VIII.*Game Birds***1926**

11. (1) A licence to hunt, kill, or capture game birds may be issued at discretion by any administrative officer or by any other person authorised in that behalf by the Governor.

Discretionary power of administrative officer or other authorised person to issue game bird licence.

The fee payable therefor shall be ten shillings.

Fee payable.

The Governor in Council may by rule alter this fee.

(2) Every licence issued under this section shall expire on the 31st day of December of the year in which it was issued.

Duration of licence.

12. (1) A game bird licence entitles the holder to hunt, kill or capture game birds to the number mentioned in the Schedule, subject to any restrictions imposed by proclamation made under Sections 4 or 5 of this Ordinance.

Rights of licensee.

(2) Any person who, having killed or captured any species of game bird to the number allowed by the Schedule, proceeds to hunt, kill, or capture birds of that species shall be guilty of an offence against this Ordinance.

13. The holder of any visitor's or resident's game licence granted under the Game Ordinance shall be deemed to be the holder of a game bird licence during the currency of and subject to the restrictions imposed by his visitor's or resident's game licence.

The holder of a visitor's or resident's game licence to be deemed the holder of a game bird licence.

14. The holder of a game bird licence shall, on demand being made by any authorised officer, produce his licence for inspection, and if such licence holder refuses or fails without reasonable cause to produce his licence when required he shall be guilty of an offence against this Ordinance.

Licence to be produced.

15. When any person is seen or found committing an offence or is reasonably suspected of having committed an offence against this Ordinance, any authorised officer may demand his name and address, and if he refuses to give such information or fails to give such information to the satisfaction of the authorised officer, or if the latter has reasonable grounds for believing that unless arrested the offender may escape or cause an unreasonable amount of delay, trouble or expense, such authorised officer may arrest him forthwith.

Power of arrest

No. VIII.

Game Birds

1926.

Power of
search.

16. Whenever any authorised officer suspects that any person has committed an offence against this Ordinance, he may inspect and search, or authorise any person subordinate to him to inspect and search, any baggage, package, vehicle, tent or premises belonging to or under the control of such person or any one in his employment; and if there is found as a consequence of such search any game bird, alive or dead, or any trophy appearing to have been obtained or to be possessed in contravention of this Ordinance, the same may be seized and taken before the court.

Disposal of
illegally
obtained game
birds or
trophies.

17. Any game bird, alive or dead, or trophy that has been obtained in contravention of this Ordinance shall, unless the Governor otherwise direct, be forfeited to the Government, and shall be disposed of as the Governor shall order.

Penalties

18. Any person who commits any act forbidden by this Ordinance, or which is declared to be an offence against this Ordinance, shall on conviction be liable to a fine not exceeding twenty-five pounds, or to imprisonment of either description not exceeding two months, or to both such fine and imprisonment.

Attempts and
abetments to
be offences.

19. (1) Where any act is forbidden by this Ordinance or is declared to be an offence against this Ordinance, any person who attempts to do such act or abets the doing of such act shall be deemed to be guilty of the principal offence.

(2) Where the possession of any thing is declared to be an offence against this Ordinance, any person who attempts to acquire possession or abets the acquisition of possession of that thing shall be guilty of the principal offence.

Killing of
birds men-
tioned in the
Game
Ordinance
forbidden.

20. Nothing in this Ordinance shall be deemed to permit the hunting, killing, or capturing of any bird in a game reserve, or any bird the hunting, killing or capturing of which is prohibited by the Game Ordinance or any amendment thereto.

Repeal.

21. The Wild Birds Protection Ordinance (Chapter 162 of the Revised Edition) is hereby repealed.

Rules.

22. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

SCHEDULE.

Birds which may not be killed or captured without a Bird Licence :—

<i>Bird.</i>		<i>No. allowed to licensee.</i>
1.	Greater Bustard (all species)	4
2.	Lesser Bustard „	Unlimited.
3.	Geese „	„
4.	Duck „	„
5.	Teal „	„
6.	Guinea Fowl „	„
7.	Francolins „	„
8.	Snipe „	„
9.	Sandgrouse „	„
10.	Quail „	„
11.	Pigeons (including Coves) „	„
12.	/ Cranes „	„ delete asterisk only. vide O.G. 2/10/28 p. 1458.
13.	* Storks „	„
14.	Flamingoes „	„

* Subject to the exceptions mentioned in Note 1 hereunder.

Note 1.—The following birds are protected under the Game Ordinance and may only be killed or captured by the holder of a special licence :—

Ostrich.	Fish Eagle (all species).
Owls (all species).	Marabout Stork.
Vultures (all species).	Ground Hornbill.
Egrets (all species).	Kavirondo Crested Crane vide O.G. 2/10/28 p. 1458.

Note 2.—Birds not mentioned in this Schedule nor protected under the Game Ordinance may be killed without licence

No. IX.

Change of Medical Titles

1926.

No. 9 OF 1926.

**An Ordinance to Provide for New Medical
Designations.**

Date of
Assent.

[1ST JULY, 1926.]

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

Short title.

1. This Ordinance may be cited as " the Change of
Medical Titles Ordinance, 1926."

Change of titles.

2. Where in any Ordinance, Rule, Order, Notice,
Contract or other document the designations " Principal
Medical Officer " and " Chief Sanitation Officer " occur, they
shall be read and construed as though the designations
" Director of Medical and Sanitary Services " and " Deputy
Director of Sanitary Service " had been substituted therefor
respectively.

Date of
commencement

3. This Ordinance shall have effect from the 30th day
of September, 1925.

No. 10 OF 1926.

**An Ordinance to Amend the Abuse of Opiates
Prevention Ordinance.**

[1ST JULY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as “ the Abuse of Opiates Prevention (Amendment) Ordinance, 1926,” and shall be read as one with the Abuse of Opiates Prevention Ordinance (Chapter 121 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Short title.

2. (1) Section 2 of the Principal Ordinance is hereby amended by deleting the definition of “ medicinal opium ” and by substituting therefor:—

Amendment of
Section 2 of
the Principal
Ordinance.

“ Medicinal opium ” means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopœia whether in powder form or granulated or otherwise or mixed with neutral materials.

(2) Section 2 of the Principal Ordinance is hereby further amended by inserting between the words “ opium ” and “ bhang ” in the definition of “ opiates ” the words “ coca leaf, crude cocaine, ecgonine.”

(3) Section 2 of the Principal Ordinance is hereby further amended by adding thereto the following definitions:—

“ Coca leaf ” means the leaf of the *Erythroxylon coca lamarck* and the *Erythroxylon novo-granatense* (Morris) *hieronymus* and their varieties, belonging to the family of *Erythroxylaceæ* and the leaf of other species of this genus from which it may be found possible to extract cocaine either directly or by chemical transformation.

“ Crude cocaine ” means any extract of the coca leaf which can be used directly or indirectly for the manufacture of cocaine.

" Ecgonine " means lævo-ecgonine (^(1x) D20° = 45°_D in 5 per cent. solution of water) of which the formula is $C_8H_{15}NO_3 \cdot H_2O$ and all the derivatives of lævo-ecgonine which might serve industrially for its recovery.

" Indian hemp " means the dried flowering or fruiting tops of the pistillate plant *Cannabis sativa* L from which the resin has not been extracted, under whatever name they may be designated in commerce.

Alteration of
nature or
packing of
opiate during
transit
forbidden.

3. (1) No consignment of any opiate while passing in transit through the Colony or whilst being stored in a bonded warehouse in the Colony may be subjected to any process which would alter the nature of the opiate.

(2) No alteration shall be made in the packing of any consignment of any opiate while passing in transit through the Colony or while stored in a bonded warehouse in the Colony unless the Commissioner of Customs has permitted such alteration.

An Ordinance to Amend the Town Planning Ordinance.

[1ST JULY, 1926.]

Date of
Assent.

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

1. This Ordinance may be cited as “ the Town Planning (Amendment) Ordinance, 1926,” and shall be read as one with the Town Planning Ordinance (Chapter 85 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.” Short title.

2. The first proviso to subsection (2) of section 13 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :— Compensation in respect of property injuriously affected by scheme, etc

“ Provided that this provision shall not apply to any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application or order to prepare a scheme was made, or to any building or other work of development commenced with the written consent and approval of the authority before the date of the approval of the scheme.”

3. Paragraph (e) of section 18 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :— Readjustment of boundaries and position of plots.

“ (e) The area of any such new plot or holding shall, as far as possible, bear the same relation to the area of the original plot or holding as the difference between the area referred to in (b) and the area referred to in (a) bears to the area referred to in (b).”

4. This Ordinance shall be deemed to have commenced Commencement. and come into operation on the fifth day of November, 1919.

An Ordinance to Amend the Statistics Ordinance.

Date of
commencement.

[1ST JULY, 1926.]

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

Short title.

1. This Ordinance may be cited as “ the Statistics (Amendment) Ordinance, 1926,” and shall be read as one with the Statistics Ordinance (Chapter 31 of the Revised Edition), hereinafter called “ the Principal Ordinance.”

Amendment of
title of the
Principal
Ordinance

2. The title of the Principal Ordinance is hereby amended by the addition of the words “ and other matters ” after the word “ undertakings ”.

Amendment of
Section 3 (1) of
the Principal
Ordinance.

3. Section 3 (1) of the Principal Ordinance is hereby amended by the addition of the following clauses :—

“ (c) Population ;

“ (d) Medical, vital, social, educational and industrial matters, cost of living, prices of commodities and rents of habitations, forestry and labour ;

“ (e) Local Government ;

“ (f) Employment and unemployment ;

“ (g) Imports and exports ;

“ (h) Immigration and emigration ;

“ (i) Posts, telegraphs and telephones ;

“ (j) Banking, insurance and finance ;

“ (k) Railways, tramways, shipping and transport ;

“ (l) The tenure, occupation, and use of land ;

and in relation to any other matter which the Governor may prescribe by notice in the Gazette.”

Ord. No. 9 of 1949.

- (a) The Expression "principal value" means the price which the property would be estimated to fetch if sold at the time of the death of the deceased.

Amended by
Ordinance No XXVII
of 1941

No. XIII.

Estate Duty

1926.

No. 13 OF 1926.

**An Ordinance to Provide for Duties on Estates
of Deceased Persons.**

[1st JULY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as " the Estate Duty Short title.
(Consolidation) Ordinance, 1926."

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

(a) The expression "^{principal value.} ~~approved value~~ " means a
~~value approved by the Commissioners.~~

(b) The expression " person accountable " means the
executor or administrator of a deceased person, and
includes, as regards any obligation under this Ordinance,
any person who takes possession of or intermeddles with
property passing on the death of the deceased person.

(c) The expression " estate duty " means the duty
imposed under this Ordinance.

(d) Subject to the provisions of section 12 (2) of this
Ordinance, the expression " property " includes immovable
and movable property and the proceeds of sale thereof
respectively and any money or investment for the time
being representing the proceeds of sale.

(e) The expression " interest in expectancy " includes
an estate in remainder or reversion and every other future
interest whether vested or contingent, but does not
include reversions expectant upon the determination of
leases.

(f) The expression " property passing on the death " includes property passing either immediately on the death or after an interval either certainly or contingently, and either originally or by way of substitutive limitation, and the expression " on the death " includes " at a period ascertainable only by reference to the death."

(g) The expression " the Commissioners " means the Estate Duty Commissioners.

(h) The expression " prescribed " means prescribed by the Commissioners.

COMMISSIONERS AND OFFICERS.

Constitution of Board of Commissioners.

3. There shall be a Board of Commissioners, in this Ordinance referred to as " the Estate Duty Commissioners," for the purpose of superintending the care, management and directions of this Ordinance having its chief office at Nairobi, which shall consist of the Attorney General and the Treasurer, who shall be *ex-officio* members thereof, and such other person, and a Secretary to the Board, as the Governor may from time to time appoint. The name of the Commissioner so appointed by the Governor shall be published in the Gazette, and any number of the Gazette containing a notice of such appointment shall be deemed sufficient evidence thereof for all purposes.

President and Vice-President of the Board.

4. The Attorney General and Treasurer shall be the President and Vice-President of the Board, and at every meeting of the Board the President, or in his absence, the Vice-President shall be chairman.

Meetings.

5. The Board shall hold its meetings once a month (if necessity requires), and oftener if need be, at such places as the President may appoint, and may adjourn from time to time. The President may at any time and shall, on a requisition signed by two members of the Board, summon a meeting thereof.

Quorum.

6. Two members of the Board shall constitute a quorum.

No. XIII.*Estate Duty***1926.**

7. The Commissioners shall, subject to the approval of the Governor in Council, by writing under their hands, or the hands of the major part of them, appoint a proper person to act as Assistant Commissioner to assess the duties hereby imposed, to see that the same are duly paid into the Treasury and to furnish monthly returns of all such assessments to the head office of the Commissioners, and subject to the like approval the Commissioners shall appoint and assign to the Assistant Commissioner appointed under this Ordinance, if occasion shall require, such clerical staff as to the Commissioners may appear necessary for the purposes of this Ordinance.

Assistant Com-
missioner.

8. The Commissioners and the Assistant Commissioner, the Secretary to the Board and the clerical staff shall be remunerated out of the general revenue of the Colony in such manner and at such rates as the Governor in Council may from time to time prescribe with the approval of the Secretary of State.

Salaries.

9. The Treasurer shall submit to the Commissioners a monthly return of all duties received by him.

Treasurer to
submit monthly
returns.

10. All money from time to time collected or received on account of duties imposed by this Ordinance shall form part of the general revenue of the Colony.

All duties
collected to
form part of
the general
revenue.

ESTATE DUTY.

11. In the case of every person dying after the commencement of this Ordinance, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided, of all property which passes on the death of such person a duty called "estate duty" at the graduated rates set forth in the Schedule to this Ordinance.

Estate duty on
property
passing on
death of person
dying after the
commencement
of this
Ordinance.

12. (1) Estate duty shall, subject to the deductions hereinafter mentioned, be payable in respect of :—

Property on
which estate
duty is payable.

(a) Any property of which the deceased was at the time of his death competent to dispose.

(b) Any property taken as a *donatio mortis causâ* made by the deceased or taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, which has not been *bonâ fide* made three years before the death of the deceased, or taken under any gift whenever made, if *bonâ fide* possession and enjoyment of such property have not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

(c) Any property which the deceased, having been absolutely entitled thereto, has caused or may cause to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, or any purchase or investment made by the deceased alone, or in concert, or by arrangement with any other person, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(d) Any property passing under any past or future disposition made by the deceased verbally, or by any instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life or any other period determinable by reference to death is reserved (or by contract or otherwise secured), either expressly or by implication to the deceased, or whereby the deceased may have reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof (notwithstanding in cases where the disposition is contained in any instrument, such instrument may have been made for valuable consideration as between the deceased and any other person).

(e) Money received under a policy of insurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by the deceased for such benefit.

(f) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole.

(g) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

Provided always that the provision marked (c) or (d) in this subsection shall not apply to any property disposed of *bonâ fide* by the deceased for full valuable consideration, but the consideration obtained therefor shall be subject to the same liability in respect of duty as the property so disposed of was subject, and if such consideration consists wholly or in part of any benefit or of any periodic payment which terminates on the death of the deceased, estate duty shall be payable on the value of such benefit or periodic payment, as if calculated at the time it was created or provided.

(2) The term "property" as used in this section shall include immovable and movable property, rights and effects of any kind situate or having their situs in the Colony, and the proceeds of sale thereof, and any investment for the time being representing the same, and, in case the deceased was at the time of his death domiciled in the Colony shall also include movable property and effects wherever situate.

Definition of property.

(3) Estate duty shall be charged and paid in respect of the value of any vessel or any share of a vessel belonging to the deceased which is registered in the Colony, notwithstanding such vessel at the time of the death of the deceased may have been at sea or elsewhere out of the Colony; and for the purpose of charging the said duty such vessel shall be deemed to have been at the time aforesaid in the Colony.

Estate duty on ships owned by deceased.

(4) Estate duty shall not be payable :—

Trust property.

(a) In respect of property held by the deceased as trustee for another person under a disposition not made by the deceased, or under a disposition made by the

deceased more than three years before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

(b) In respect of any gift *inter vivos*, surrender, assurance, divesting or disposition made or effected by the deceased for public or charitable purposes more than twelve months before the death of the deceased if *bonâ fide* possession and enjoyment of the property have been assumed by the donee immediately upon the gift, surrender, assurance, divesting or disposition and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

(c) In respect of gifts *inter vivos* which are made by the deceased in consideration of marriage or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased and to have been reasonable, having regard to the amount of his income or to the circumstances, or which in the case of any donee did not exceed in the aggregate one hundred pounds in value or amount.

Property in the
United King-
dom or a
British
possession.

(5) Where the Commissioners are satisfied that in the United Kingdom or in a British possession duty is payable by reason of a death in respect of any property situate in the United Kingdom or in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

Property in a
foreign
country.

(6) Where any property subject to estate duty under this Ordinance is situate in a foreign country, and the Commissioners are satisfied that by reason of the death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

Date of
operation.

(7) This section shall be deemed to have come into operation on the first day of January, 1924.

No. XIII.

Estate Duty

1926.

13. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Aggregation of property to form one estate for purposes of estate duty.

Provided that any property so passing, in which the deceased never had an interest, shall not be aggregated with any other property, but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof.

COLLECTION AND RECOVERY OF DUTY AND VALUE OF PROPERTY.

14. Estate duty shall be collected and recovered as hereinafter mentioned.

Collection and recovery of estate duty.

(1) The person accountable shall in the first instance pay the duty, calculated at the appropriate rate, according to the value of the estate as set forth in the estate duty affidavit and valuation required to be furnished under section 20, forthwith on delivering a copy of such affidavit and account to the Assistant Commissioner, but if afterwards it appears that for any reason too little duty has been paid a corrective affidavit and account shall be furnished to the Assistant Commissioner and the additional duty shall be payable and be treated as duty in arrear.

(2) Payment of duty shall be made to the Local Treasury for the district in which the persons making payment reside and the receipt for the duty shall be produced to the Assistant Commissioner for inspection.

Repealed Ord. No 9. 1948

(2) Payment of duty shall be made to the Assistant Commissioner.

(3) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

Ord. No 9 1948

(4) Interest at the rate of 6 per cent. per annum on the estate duty shall be paid from six months after the date of the death to the date of delivery of the estate duty affidavit and account, and interest at the rate of 8 per cent. shall be payable from thirty days from the date of assessment to the date of payment and shall form part of the estate duty.

Interest.

Payment of
duty on
immovable
property by
instalments.

(5) Provided that the duty due upon the account and valuation, required to be delivered under section 20, of the immovable property may, at the option of the person accountable delivering the account and valuation, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of 6 per cent. per annum from the date at which the first instalment is due, and the first instalment shall be due at the expiration of six months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the immovable property is sold shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Value of
property.

15. (1) In determining the value of an estate for the purposes of estate duty, allowance shall be made for reasonable funeral expenses, and for debts and incumbrances; but no allowance shall be made :—

(a) For debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest; nor

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; nor

(c) More than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the Colony (unless contracted to be paid in the Colony, or charged on property situate within the Colony), except out of the value of any movable property of the deceased situate out of the Colony in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of

the Assistant Commissioner that the movable property of the deceased situate in the foreign country or the United Kingdom or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

16. (1) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then :—

Interest in expectancy.

(a) For the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) The rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(2) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall :—

(a) If the interest extended to the whole income of the property, be the principal value of that property; and

(b) If the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

17. The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

Reduction of full amount of duty where the margin above the limit of value is small.

18. Where the Commissioners are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years estate

Relief in respect of quick succession where property consists of land or a business.

duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the commencement of this Ordinance), in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent.; where the second death occurs within two years of the first death, by forty per cent.; where the second death occurs within three years of the first death, by thirty per cent.; where the second death occurs within four years of the first death, by twenty per cent.; where the second death occurs within five years of the first death, by ten per cent. : Provided that where the value, on which duty is payable, of the property on the second death exceeds the value, on which duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Interest in
expectancy.

19. Where an interest in expectancy in any property has, before the commencement of this Ordinance, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Ordinance had not passed, and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Account of
property and
valuation to be
furnished to
the Assistant
Commissioner.

20. (1) Every person accountable for the payment of estate duty in respect of property passing on the death of the deceased shall furnish to the Assistant Commissioner an account of such property, showing the value thereof.

(2) The said account and valuation shall be delivered to the Assistant Commissioner within six months after the date of the death of the deceased, or within such further time as the Commissioners may allow, and the said valuation shall be verified by oath or affirmation.

(3) The Assistant Commissioner may require that any valuation to be furnished under the provisions of this section shall be made and signed by an approved valuer.

Delete Sub-Section (3) Ord. no 9 of 1949.

21. (1) The Assistant Commissioner may at any time inspect and take or cause to be taken copies of the record of any case in which application for probate or letters of administration, or sealing under the British and Colonial Probate Ordinance, has been made, and if on such inspection or otherwise he is of opinion that the value of the property shown by the account and valuation furnished in accordance with section 20 has been underestimated or that any property passing on the death of the deceased has been omitted from such account and valuation, the Assistant Commissioner may, if he thinks fit, summon the person accountable for the duty, or the valuer, if any, to appear before him, either in person or by agent, and give any information or explanation respecting property passing on the death of the deceased or the value thereof, and the person so summoned shall be legally bound to appear and if any person refuses or wilfully neglects to make such appearance or give such information or explanation as aforesaid, or knowingly misleads or deceives the Assistant Commissioner in giving such information or explanation, he shall be liable on conviction to the punishment provided respectively by sections 174, 176, and 177 of the Indian Penal Code, as applied to the Colony, or any statutory enactment in substitution therefor. The Assistant Commissioner may take evidence on oath and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property shown by the account and valuation has been underestimated, or that property passing on the death has been omitted from the aforesaid account and valuation, he may by notice in writing require the person accountable for the duty to cause the valuation to be amended or to disclose the nature and value of the property so omitted by furnishing to the Assistant Commissioner a corrective account and valuation which shall be verified by oath or affirmation. The Assistant Commissioner may also require that any valuation to be furnished under the provisions of this section shall be made and signed by an approved valuer.

Power of Assistant Commissioner to inspect and take copies of record of any case in which application for probate or letters of administration has been made, and if Assistant Commissioner is of opinion value of property underestimated he may take steps to ascertain the real value.

(2) If, within thirty days or such further time as may be allowed by the Assistant Commissioner, a corrective account and valuation is not so furnished to the satisfaction of the Assistant Commissioner, the Assistant Commissioner shall report the case and all the evidence taken thereon to the Commissioners.

(3) The Commissioners, on receipt of such report, shall hold an inquiry into the matter and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Assistant Commissioner shall be deemed to be a party to the inquiry.

(4) The finding of the Commissioners shall be notified to the person accountable for the duty, and if within thirty days, or such further time as may be allowed by the Commissioners, he shall fail to pay, or make arrangements to pay, the duty payable on the value of the property so found, the Commissioners may move the Supreme Court for an order directing payment.

(5) At the hearing of the motion the evidence taken before the Assistant Commissioner shall be read as evidence in the case, and the Court may allow such further evidence as may be produced to prove the true value of the property, and thereafter may make such order as to payment, including costs as between the Commissioners and the person accountable for the duty, as it may deem fit, and such order shall be final and binding on all parties.

Relief where
too high a duty
has been paid.

22. (1) Where the property of the deceased has been estimated to be of greater value than the same has afterwards proved to be, and the person accountable for the duty has consequently paid too high a duty thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters of administration to the Assistant Commissioner and delivers to the Assistant Commissioner a particular account and valuation of the property of the deceased, verified by affidavit or affirmation, the Assistant Commissioner shall report his opinion to the Commissioners.

(2) If the Commissioners are satisfied that too much duty has been paid they shall direct the Treasurer to make a refund out of the general revenue of the Colony.

(3) If the Commissioners shall refuse to make a refund the person accountable for the duty may, within thirty days of receiving a notification to that effect, move the Supreme Court for a rule to direct the Commissioners to make such refund.

(4) Any order made by the Supreme Court for a refund or for payment of costs by the Commissioners shall be in the nature of a direction to the Treasurer to pay to the person named in the order the sum found due. Such order shall be signed by the Judge, and on receipt of the same by the Treasurer he shall comply therewith.

23. Where the Commissioners are satisfied that the estate duty leviable in respect of any particular property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding seven per cent., or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

Postponement
of payment.

24. All duty in arrear shall be a first charge on the property in respect of which the duty is leviable: Provided that the property shall not be chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

Charge of
estate duty in
arrear on
property.

25. (1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accountable for the duty, give a certificate to that effect which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof, as the case may be.

Release of
person paying
estate duty.

(2) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for.

(3) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

No. XIII.

Estate Duty

1926.

No probate or letters of administration to be granted except on production of certificate from Assistant Commissioner.

26. No probate or letters of administration or resealing of probate or letters of administration shall be granted by any court, unless a certificate is produced to the court from the Assistant Commissioner or the Commissioners to the effect that the requirements of this Ordinance in regard to the payment of duty have been complied with.

Mode of determining situation of property in United Kingdom.

27. The local situation in the United Kingdom of any property shall be determined in accordance with the law of England with regard to the local situation of property within the meaning of section 20 of the Finance Act, 1894 (Imperial).

LEGAL PROCEEDINGS.

Proceedings for duty, fines, etc., not to be commenced without order of the Commissioners.

28. It shall not be lawful to commence proceedings against any person for the recovery of any estate duty, fines or penalties levied, imposed or payable under this Ordinance or any rules thereunder, except by order of the Commissioners.

Proceedings to be in the name of the Estate Duty Commissioners.

29. All actions, suits and proceedings for the recovery of any estate duty, fines or penalties or in respect of any matters relating to this Ordinance shall be commenced, prosecuted and carried on in the name of the Commissioners and shall be verified by one of the Commissioners or by the Secretary of the Board, and the seal of the Board.

The Commissioners may be plaintiffs or defendants, as the case may require, and may be represented in such actions, suits and proceedings by an advocate or administrative officer as circumstances require.

Commissioners' power to sue for estate duty, etc.

30. Nothing in this Ordinance shall prevent the Commissioners from suing for, at any time, any estate duty, fees or penalties due and payable in respect of any property, or for any estate duty, fees or penalties due and payable in respect of any intentionally undisclosed property.

Power to make rules.

31. The Governor in Council may from time to time make rules for the purposes of this Ordinance :—

(1) For prescribing the forms and methods in which accounts shall be kept and remitted to the Treasury.

Ord. No. 9 of 1949.

The principal Ordinance is amended by inserting therein next after section 30 the following new section 31 and by re-numbering sections 31, 32, 33 and 34 as sections 32, 33, 34 and 35 respectively:-

"31. The Governor in Council, on the application of any person accountable for estate duty or interested in any property on which estate duty is payable, may if he thinks fit, remit the payment of any estate duty or any part thereof or any interest thereon, in any case where, in the opinion of the Governor in Council, such payment would cause exceptional hardship."

No. XIII.*Estate Duty***1926.**

(2) For the procedure to be observed in carrying out the provisions of this Ordinance,

(3) For prescribing the fees and charges which shall be levied in respect of any act, matter or thing required to be done before the Commissioners and the Assistant Commissioner.

(4) For prescribing the forms generally to be used for the purposes of this Ordinance.

All rules made under this section shall be submitted to the Legislative Council at the sessions next following the date of the promulgation of such rules.

32. A person who wilfully fails to comply with the provisions of this Ordinance shall be liable to pay a penalty not exceeding five hundred pounds, which may be recovered as a civil debt recoverable summarily. Penalties.

33. This Ordinance shall apply to all persons other than natives living in a communal state in a tribe. Application of Ordinance.

34. The Estate Duty Ordinance (Chapter 53 of the Revised Edition) and the Estate Duty (Amendment) Ordinance, 1924 (No. 21 of 1924), are hereby repealed. Repeal.

SCHEDULE.**SCALE OF RATES OF ESTATE DUTY.**

Where the Principal Value of Estate Exceeds	And Does Not Exceed	Estate Duty shall be Payable at the Rate of	
£	£		
—	<u>1,000</u>	<u>Exempt.</u>	<i>Amended, 21.2.47.</i>
000	<u>1,000</u>	<u>Exempt.</u>	
1,000	5,000	1½	per cent.
5,000	10,000	2½	
10,000	15,000	3	
15,000	20,000	4	
20,000	30,000	5	
30,000	50,000	6	
50,000	60,000	7	
60,000	70,000	8	
70,000	90,000	9	

SCALE OF RATES OF ESTATE DUTY—*Contd.*

Where the Principal Value of Estate Exceeds		And Does Not Exceed		Estate Duty shall be Payable at the Rate of
£		£		
90,000	...	110,000	...	10 per cent.
110,000	...	130,000	...	11 „
130,000	...	150,000	...	12 „
150,000	...	175,000	...	13 „
175,000	...	200,000	...	14 „
200,000	...	225,000	...	15 „
225,000	...	250,000	...	16 „
250,000	...	300,000	...	17 „
300,000	...	350,000	...	18 „
350,000	...	400,000	...	19 „
400,000	...	450,000	...	20 „
450,000	...	500,000	...	21 „
500,000	...	600,000	...	22 „
600,000	...	800,000	...	23 „
800,000	...	1,000,000	...	24 „
1,000,000	..	—	...	25 „

No. XIV.

Costs in Criminal Cases

1926.

No. 14 OF 1926.

*Repealed
11/30***An Ordinance to make Provision for the Payment
of Costs in Criminal Cases.**

[1ST JULY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as "the Costs in Short title.
Criminal Cases Ordinance, 1926."

2. For the purposes of this Ordinance the following Definitions.
expressions shall have the following meanings :—

"Public prosecutor" means any person prosecuting for
or on behalf of the Crown or for or on behalf of a public
authority.

"Private prosecutor" means any prosecutor other than
a public prosecutor.

3. It shall be lawful for a Judge of the Supreme Court Costs against
or a magistrate of a subordinate court of the first, second or defendant.
third class, if he thinks fit, to order any person convicted
before him of an offence to pay to the public or private prose-
cutor, as the case may be, such reasonable costs as to the said
Judge or magistrate may seem fit, in addition to any other
penalty imposed, provided that such costs shall not exceed
£50 in the case of the Supreme Court or £25 in the case of a
subordinate court.

4. It shall be lawful for a Judge of the Supreme Court Costs against
or a magistrate of a subordinate court of the first, second or private
third class who acquits or discharges a person accused of an prosecutor.
offence, provided the prosecution for such offence was originally
instituted on a summons or warrant issued by a court on the
application of a private prosecutor, to order such private
prosecutor to pay to the accused such reasonable costs as to
the said Judge or magistrate may seem fit, provided that such
costs shall not exceed £50 in the case of an acquittal or
discharge by the Supreme Court and £25 in the case of an
acquittal or discharge by a subordinate court, and provided
further that no such order shall be made if the Judge or
magistrate shall consider that the private prosecutor had
reasonable grounds for making his complaint.

No. XIV.*Costs in Criminal Cases***1926.**

The costs awarded under this section may be awarded in addition to any compensation awarded under section 209 of the Criminal Procedure Ordinance.

Cap. 7.

Order to
pay costs
appealable.

5. An appeal shall lie from any order awarding costs under either of the two preceding sections, if made by a magistrate to the Supreme Court and if by a Judge of the Supreme Court to the Court of Appeal for Eastern Africa. The Appellate Court shall have power to give such costs of the appeal as it shall deem reasonable.

Costs to be
specified in
order.

6. The sums so allowed for costs shall in all cases be specified in the order of conviction or order of acquittal or discharge.

Recovery
of costs.

7. Costs awarded under this Ordinance may be recovered in the same manner as a fine may be recovered under sections 304 and 305 of the Criminal Procedure Ordinance.

Cap. 7.

Imprisonment
on failure to
pay costs.

8. If any person fails to pay costs awarded against him it shall be lawful for the Judge or magistrate, as the case may be, on the complaint of the person to whom the costs were directed to be paid, to summon the person in default to show cause why he should not be imprisoned, and if the person so summoned do not forthwith pay the amount awarded, together with the costs of the summons, the Judge or magistrate may sentence him to imprisonment of either description for a period not exceeding one calendar month, in addition to any term of imprisonment to which he may be therein liable under the judgment in the case: Provided that it shall be lawful for the Judge or magistrate to adjourn the case to a named date or to suspend the issue of a warrant for a period not exceeding fifteen days: Provided also that any person imprisoned for non-payment of costs shall, on payment of the amount of costs awarded, be released from such imprisonment.

vide Section 2 of Ordinance No 15 of 1928.

3. Whoever voluntarily uses force of an indecent nature to any woman under the age of sixteen years, shall, notwithstanding that such woman consents to such force, be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to a fine: Provided that it shall be sufficient defence to any charge under this sub-section if it shall be made to appear to the court, jury or assessors before whom the charge shall be brought that the person so charged had reasonable cause to believe that the woman was of or above the age of sixteen years.

No. 15 OF 1926.

*Repealed
10/30.*

**An Ordinance to Amend the Criminal Law
Amendment Ordinance.**

[5TH JULY, 1926.]

Date of
commencement.

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

1. This Ordinance may be cited as " the Criminal Law Amendment Ordinance, 1926," and shall be read as one with the Criminal Law Amendment Ordinance (Chapter 78 of the Revised Edition), hereinafter referred to as " the Principal Ordinance." Short title.

2. Section 3 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :— Amendment of
Penal Code.

" 3 (1) The following section shall be read in lieu of
section 376 of the Indian Penal Code :—

" 376. Whoever commits rape shall be punished with death, or with imprisonment of either description for life or for any term not less than three years, and shall also be liable to a fine." Punishment
for rape.

" (2) The following section shall be read in lieu of
section 354 of the said Code :—

" 354 (1) Whoever, in an attempt to commit rape, assaults or uses criminal force to any woman shall be punished with imprisonment of either description for a term which may extend to life, and shall also be liable to a fine. Assault or use
of criminal
force to a
woman in
attempting to
commit rape.

" (2) Whoever assaults or uses criminal force to any woman intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to a fine." Assault or use
of criminal
force to a
woman with
intent to
outrage her
modesty. *

3. Section 6 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :—

All cases of rape, and also cases of attempted rape upon non-native women, to be tried by Supreme Court.

“ 6. Every case of rape, and every case in which any person is charged with committing an offence punishable under section 354 of the Indian Penal Code as amended by this Ordinance against or in respect of a non-native woman, shall be committed for trial to the Supreme Court.”

4. Section 7 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :—

Power of Court to order whipping for rape, etc.

Cap. 7.

“ 7. Subject to the provisions of section 311 of the Criminal Procedure Ordinance, any person who is convicted of an offence under section 354 or section 376 of the Indian Penal Code as amended by this Ordinance may, at the discretion of the Court, be punished with whipping in addition to any other punishment which may be awarded.”

No. 16 OF 1926.

**An Ordinance to Regulate the Carriage of Goods
by Sea.**

[28TH SEPTEMBER, 1926.] Date of Assent

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 Carriage of Goods by Sea Ordinance, 1926." Short title

2. Subject to the provisions of this Ordinance, the Rules set out in the Schedule hereto shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in the Colony to any other port whether in or outside the Colony. Application of Rules in Schedule

3. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship. Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

4. Every bill of lading, or similar document of title, issued in the Colony which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Ordinance. Statement as to application of Rules to be included in bills of lading.

5. Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in the Colony to any other port in the Colony, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted. Modification of Article VI of Rules in relation to coasting trade.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.

to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Saving and
operation.

57 & 58
Vict., c. 60.

7. (1) Nothing in this Ordinance shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two, and five hundred and three of the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

(2) The Rules shall not, by virtue of this Ordinance, apply to any contract for the carriage of goods by sea made before such day, not being earlier than the thirtieth day of June, 1926, as the Governor in Council may by Order direct, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

SCHEDULE.

RULES RELATING TO BILLS OF LADING.

ARTICLE I.

Definitions.

In these Rules the following expressions have the meanings hereby assigned to them, respectively, that is to say :—

(a) " Carrier " includes the owner or the charterer who enters into a contract of carriage with a shipper ;

(b) " Contract of carriage " applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same :

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(d) "Ship" means any vessel used for the carriage of goods by sea;

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.

Risks.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III.

Responsibilities and Liabilities.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to:—

(a) Make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided

such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) The apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article, or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV.

Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this paragraph.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from :—

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) Fire, unless caused by the actual fault or privity of the carrier;

(c) Perils, dangers, and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of war;

(f) Act of public enemies;

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process;

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;

(k) Riots and civil commotions;

(l) Saving or attempting to save life or property at sea;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

(n) Insufficiency of packing;

(o) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence;

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

No. XVI.*Carriage of Goods by Sea***1926.**

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature, to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier, except to general average, if any.

ARTICLE V.

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.

Special Conditions.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued, and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect :

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII.

Limitations on the Application of the Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII.

Limitation of Liability

The provisions of these Rules shall not affect the rights and obligations of the carrier under any law for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in these Rules are to be taken to be gold value.

**An Ordinance to Amend the State Railway
Provident Fund Ordinance.**

Date of Assent.

[28TH SEPTEMBER, 1926.]

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 State Railway Provident Fund (Amendment) Ordinance, 1926,” and shall be read as one with the State Railway Provident Fund Ordinance (Chapter 35 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Amendment of
definition of
“ State
Railway.”

2. Paragraph (a) of section 4 of the Principal Ordinance is hereby amended so as to read as follows :—

“ (a) ‘ State Railway ’ means a State Railway open to public traffic and shall be deemed to include the Kenya and Uganda Railway.”

Power to
make rules.

3. Section 5 of the Principal Ordinance is hereby repealed and in lieu thereof shall be read the following :—

“ 5. The Governor, or in the case of the Kenya and Uganda Railway the High Commissioner, with the approval of the Secretary of State, may make rules for :—

“ (a) The creation and management of a Provident Fund; and

“ (b) Compelling deposits thereto on the part of the servants of a State Railway.”

Saving of
previous rules.

4. All rules in force at the commencement of this Ordinance made by the Governor under the Principal Ordinance shall, until repealed or altered, be deemed to be rules made by the High Commissioner by virtue of the powers conferred upon him by the Kenya and Uganda (Transport) Order in Council, 1925, and this Ordinance, and shall be construed as if so made, and shall, until so repealed or altered, remain in full force and effect; and deposits made under the Principal Ordinance shall be deemed to have been made under this Ordinance and shall be under the control of the High Commissioner.

No. 18 OF 1926.

**An Ordinance to Supply a Further Sum of Money
for the Service of the Year ended 31st December,
1925.**

[28TH SEPTEMBER, 1926.] Date of Assent.

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 Supplementary Short title.
Appropriation Ordinance, 1926."

2. The Public Revenue for the period 1st January to 31st December, 1925, and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the period 1st January to 31st December, 1925, with a further sum of three hundred thousand seven hundred and sixty-six pounds, six shillings and thirty-nine cents, in addition to the sums provided by the Appropriation Ordinance, 1924. (28 of 1924.)

3. The money granted by this Ordinance shall be applied to the purposes and services expressed in the Schedule annexed hereto.

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 three hundred thousand seven hundred and sixty-six pounds, six shillings and thirty-nine cents, which have come in course of payment during the period 1st January to 31st December, 1925.

No. XVIII.

Supplementary Appropriation

1926.

No. of Head.	SCHEDULE.	£	s.	c.
II.	Rent and Interest to H.H. the Sultan of Zanzibar ...	500	0	00
IV.	His Excellency the Governor ...	2,310	0	43
IVa.	His Excellency the Governor— Extraordinary ...	200	18	97
IVb.	Governors' Conference ...	148	12	10
V.	Secretariat ...	218	19	90
VI.	"Official Gazette" and Printing	1,375	11	98
VIIa.	Administration—Extraordinary	13	10	00
VIII.	Treasury ...	15	9	65
Xa.	Port and Marine Department— Extraordinary ...	83	5	95
XV.	Police ...	4,256	0	89
XVIIa.	Medical Department— Extraordinary ...	478	0	00
XVIIIa.	Education—Extraordinary ...	622	3	21
XIX.	Military ...	1,393	2	06
XIXa.	Military—Extraordinary ...	2,096	8	18
XXa.	Post Office and Telegraphs— Extraordinary ...	559	16	47
XXI.	Agricultural Department ...	8,771	3	55
XXV.	Miscellaneous Services ..	275,224	15	97
XXVII.	Public Works Department ...	226	7	54
XXVIII.	Public Works Recurrent .	2,271	19	53
		<u>£300,766</u>	<u>6</u>	<u>39</u>

No. XIX. Supplementary Appropriation (Railway)**1926.**

No. 19 OF 1926.

*Amended
25/27.***An Ordinance to Amend the Supplementary
Appropriation (Railway) Ordinance, 1924.**

[28TH SEPTEMBER, 1926.] Date of Assent.

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 Supplementary Short title
Appropriation (Railway) Amendment Ordinance, 1926," and
shall be read as one with "the Supplementary Appropriation
(Railway) Ordinance, 1924," hereinafter referred to as "the (25 of 1924.)
Principal Ordinance."

2. The Principal Ordinance is hereby amended by the Substitution
repeal of the Schedule thereto and the substitution therefor of new
of the Schedule annexed to this Ordinance. Schedule to
Principal
Ordinance

SCHEDULE.

<i>Heads of Expenditure.</i>	<i>Amounts.</i>
Railway and Marine Revenue Services	£1,993,509
Railway and Marine Renewals, Betterment and Insurance Fund Services	880,500
Total	<u>£2,874,009</u>

No. XX.

Mining Amendment

1926.

No. 20 OF 1926.

~~_____~~ *repealed 1/21*
**An Ordinance to Amend the Mining Ordinance,
1925.**

Date of Assent.

[26TH NOVEMBER, 1926.]

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

Short title.

(3 of 1925.)

1. This Ordinance may be cited as "the Mining (Amendment) Ordinance, 1926," and shall be read as one with the Mining Ordinance, 1925, hereinafter referred to as "the Principal Ordinance."

Amendment of
Section 85 of
the Principal
Ordinance.

2. Section 85 of the Principal Ordinance is hereby amended by the deletion of the words "without the previous sanction of the Governor".

No. XXI. *Mohammedan Marriage Divorce and
Succession*

1926.

No. 21 OF 1926.

**An Ordinance to Amend the Mohammedan
Marriage Divorce and Succession Ordinance.**

[28TH SEPTEMBER, 1926.] Date of Assent.

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 Mohammedan Short title.
Marriage Divorce and Succession (Amendment) Ordinance,
1926," and shall be read as one with the Mohammedan
Marriage Divorce and Succession Ordinance (Chapter 171 of
the Revised Edition), hereinafter referred to as " the Principal
Ordinance ".

2. Subsection (2) of section 3 of the Principal Ordinance Amendment of
is hereby amended by the deletion of the words " both parties section 3 (2) of
to the marriage are resident " in the tenth and eleventh lines the Principal
thereof and by the substitution therefor of the words " the Ordinance.
petitioner is resident ".

No. 22 OF 1926.

*Repealed
9/30.***An Ordinance to Amend the Crown Lands Ordinance.**

Date of Assent.

[28TH SEPTEMBER, 1926.]

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, 1926," and shall be read as one with the Crown Lands Ordinance (Chapter 140 of the Revised Edition), hereinafter referred to as " the Principal Ordinance."

Power to establish
" Native
Reserves."

2. Section 54 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :—

" 54. (1) The Governor in Council may by notice in the Gazette declare that any area of Crown land, either by general or particular description and whether the same has been surveyed or not, shall be a Native Reserve.

(2) Any land declared to be a Native Reserve under this section shall be reserved for the benefit of the native tribes of the Colony : Provided that such reservation shall not confer on any tribe or member of any tribe any right to alienate the land so reserved or any part thereof."

Power to
dispose of land
in Native
Reserves.

3. Section 55 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :—

" 55. No land in a Native Reserve shall be sold, leased or otherwise disposed of under this Ordinance : Provided, however, that portions of the land in a Native Reserve may, subject to and in accordance with Rules made under section 58 of this Ordinance, be let on lease or licence, or otherwise set apart or utilised, for purposes beneficial to the inhabitants of such Reserve."

Vide C.L.'s (Amend^{mt}) Ord^r, No: 5/29 - P. 1305,
re Communal Reserves.

No. XXIII.

Townships

1926.

No. 23 OF 1926.

Repealed
Ord. 63/30
89. 1. 3021

An Ordinance to Amend the Townships Ordinance.

[28TH SEPTEMBER, 1926.] Date of Assent.

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 Townships Short title. (Amendment) Ordinance, 1926," and shall be read as one with the Townships Ordinance (Chapter 82 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

2. Section 4 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :— Power to levy rates.

" 4. (1) The power to make rules shall include power to fix and levy rates upon lands and buildings for the purposes of the township.

(2) Where any rate is assessed upon the acreage of land such rates shall not exceed fifty shillings per annum per acre.

(3) Where any rate is assessed upon the value of property the following provisions shall apply :—

(a) The rateable value of any property shall not exceed seventy-five per cent. of its gross annual value;

(b) The total sum to be raised upon any property by rates shall not exceed ten per cent. of its rateable value;

(c) Any ratepayer shall be at liberty to object to the assessment of his own or any other property within the township, and an ultimate appeal in all matters respecting assessment and rating shall lie to the Supreme Court."

3. This Ordinance shall be deemed to have commenced Commencement. and come into operation on the 25th day of March, 1922.

An Ordinance to Amend the Notaries Public Ordinance.

Date of Assent.

[28TH SEPTEMBER, 1926.]

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 Notaries Public (Amendment) Ordinance, 1926,” and shall be read as one with the Notaries Public Ordinance (Chapter 19 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Amendment of
sections 2 and
3 of the
Principal
Ordinance

2. Sections 2 and 3 of the Principal Ordinance are hereby repealed and replaced as follows :—

2. The Governor shall have power to direct the Registrar of the Supreme Court to grant a licence to any practising advocate who may be recommended by the Chief Justice to exercise within the Colony the functions and duties commonly performed by Notaries Public of the United Kingdom and to levy fees in accordance with the Second Schedule hereto.

3. No advocate shall be licensed under this Ordinance unless he shall have practised in the Colony for at least five years.

Amendment of
Schedule I of
the Principal
Ordinance.

3. Schedule I of the Principal Ordinance is repealed and replaced as follows :—

Fee payable on appointment as a Notary Public
and for a licence to practise until 31st
December next after such appointment ... £20

On yearly renewal of certificate—

In Nairobi and Mombasa ... £5

Elsewhere ... £3

No.	Section Amended	Precis of Amendment	Reference to Amending Ord.	Remarks
1	-	Interpretation.	1/1926.	
2	-	Exemption of motor vehicles imported for temp. stay.	-ditto-	

*Amended**34/31**12/47.*

1926.

No. XXV.

Customs Management

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO CUSTOMS.

THE CUSTOMS MANAGEMENT ORDINANCE, 1926.

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Interpretation.
4. Obligation to answer questions.
5. Obligation to produce documents.

PART II.—ADMINISTRATION.

6. Commissioner.
7. Powers of Commissioner.
8. Delegation by Commissioner.
9. Revocation of delegation.
10. Continuance of officers.
11. Customs seal.
12. Customs flag.
13. Appointment of boarding stations, etc.
14. Appointment of ports and wharves.
15. Appointment of sufferance wharves, etc.
16. Continuance of boarding stations, etc.
17. Accommodation on wharves.
18. Before whom declarations may be made.
19. Declaration by youths.
20. Working days and hours.
21. Overtime charges.

PART III.—CUSTOMS CONTROL, EXAMINATION, ENTRIES, AND SECURITIES GENERALLY.

22. Customs control of goods.
23. Goods on ships subject to Customs control.
24. Right of examination.
25. Cost of examination.

26. Customs control of goods.
27. No claim for compensation for loss.
28. Goods imported through post.
29. Procedure respecting postal packets.
30. Entries.
31. Owner to make entry.
32. Power to allow special entries.
33. Person making entries to answer questions.
34. Collector to pass entry.
35. Goods to be dealt with according to entry.
36. Passengers' baggage.
37. Inland carriage and navigation.
38. Right to require security.
39. Nature of security.
40. General bonds may be given.
41. Cancellation of bonds.
42. New securities.
43. Form of Customs security.
44. Effect of Customs security.
45. Issue of permits.

PART IV.—THE IMPORTATION OF GOODS.

46. Importation.

DIVISION I.—PROHIBITED AND RESTRICTED IMPORTS.

47. Power to prohibit imports.
48. Prohibited imports.
49. Restricted imports.
50. Increase of penalties in war time.
51. Prohibited imports consigned to places outside the Territory.

DIVISION II.—THE BOARDING OF SHIPS.

52. Ships to enter ports.
53. Ship to bring to on being signalled.
54. Ship to bring to at boarding station.
55. Facility for boarding.
56. Ship to come quickly to place of unloading.
57. Ship not to be moved without authority.
58. Restriction on boarding ship before Customs officer.

DIVISION III.—THE REPORT OF THE CARGO.

59. Report of cargo.
60. Amendment of inward report.
61. Master of wrecked ship to report.

DIVISION IV.—THE ENTRY, UNSHIPMENT, LANDING AND
EXAMINATION OF GOODS.

62. Kinds of entries.
63. Provisional entry.
64. Passing of provisional entry.
65. Perfect entry within three months.
66. Passing of entry.
67. Breaking bulk.
68. Authority for unshipment.
69. Licences for boats and lighters.
70. Revocation of licences.
71. Use of unlicensed boats or lighters.
72. Unshipment of goods.
73. Goods landed on permit at ship's risk.
74. Repacking on wharf.

PART V.—THE WAREHOUSING OF GOODS.

DIVISION I.—LICENSED WAREHOUSES.

75. Dutiable goods may be warehoused.
76. Conditions in licences.
77. Classes of warehouses.
78. Annual fees.
79. Penalty for continuing warehouse without licence.
80. Cancellation of licence by Commissioner.
81. Cancelling by Governor.
82. Effect of cancellation of licence.
83. Continuation of existing licences.
84. Officer to take account of goods landed to be warehoused.
85. Completion of warehousing.
86. Removal of goods to warehouse.
87. Packages in which goods to be deposited.
88. Duty of licensee.
89. Opening warehouse.
90. Collector may order removal of goods from private to
general warehouse.

91. Period of warehousing.
92. Re-warehousing.
93. Goods for exhibition.
94. Collector to have access to warehouse.
95. Regauging or reweighing of goods.
96. Sampling of warehoused goods.
97. Operations in warehouse.
98. Revaluation.
99. Goods not worth duty may be destroyed.
100. Combustible or inflammable goods.
101. Entry of warehoused goods.
102. Constructive warehousing.

DIVISION II.—KING'S WAREHOUSES AND GOVERNMENT
WAREHOUSES.

103. King's warehouses.
104. Fees for goods deposited.
105. Fees to be paid before removal of goods.
106. Power to sell.
107. Purposes of King's warehouses.
108. Payment of charges.

DIVISION III.—TRANSIT WAREHOUSES.

109. Control of transit warehouses.

PART VI.—EXPORTATION OF GOODS

110. Export of Uganda produce.
111. Power to prohibit exports.
112. Prohibited exports.
113. Restricted exports.
114. Tonnage of export ship.
115. Conditions for export.
116. Goods to be shipped at wharf.
117. Short-shipped goods.
118. Documents and security.
119. Certificate of clearance.
120. Requisites for obtaining clearance.
121. Deposit of manifest.
122. Shipment of unspecified goods.
123. Amendment of outward report.
124. Conditions for clearance.
125. Ship to bring to at proper stations.

- 126. Master to account for missing goods.
- 127. Goods exported to be landed at proper destination.
- 128. Certificate of landing.

PART VII.—SHIPS' STORES.

- 129. Use of ships' stores.
- 130. Relanding ships' stores.
- 131. Ships' stores under seal.
- 132. Surplus stores may be landed on permit.

PART VIII.—THE DUTIES.

DIVISION I.—THE PAYMENT AND COMPUTATION OF DUTIES

GENERALLY.

- 133. Goods for the Uganda Protectorate.
- 134. Goods not liable to import duty.
- 135. Sale of Crown, etc., goods.
- 136. Time for ascertaining rate of import duties.
- 137. Export duties.
- 138. Weights and measures.
- 139. Allowance for tare and draft.
- 140. Proportion.
- 141. Duty, how fixed.
- 142. Duties, where payable.
- 143. Highest duties to be charged.
- 144. When goods composed of two or more materials.
- 145. Measurement for duty.
- 146. Value of goods sold.
- 147. Derelict goods dutiable.
- 148. As to payment of duty on goods in manifest but not produced or landed.
- 149. Samples.
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No 25 OF 1926.

**An Ordinance to Consolidate and Amend the Law
Relating to Customs.**

Date of Assent.

[28TH SEPTEMBER, 1926.]

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

PART I.—PRELIMINARY.

Short title.

1. This Ordinance may be cited as “ the Customs Management Ordinance, 1926.”

Commencement.

2. This Ordinance shall come into operation on a date to be fixed by notice by the Governor in the Gazette.

Interpretation.

3. In this Ordinance and in all Customs Ordinances the following words and expressions shall have the meaning hereby assigned to them unless there is something in the subject or context repugnant to such construction :—

“ By authority ” means by the authority of the Commissioner of Customs or any officer of Customs doing duty in the matter in relation to which the expression is used ;

“ Carriage ” includes vehicles and conveyances of all kinds ;

“ Collector ” includes the Commissioner and any collector of Customs and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used ;

“ Commissioner ” means the Commissioner of Customs or any officer for the time being lawfully acting in that capacity ;

“ Court ” means any duly constituted court having jurisdiction other than a native court ;

“ Customs Ordinances ” includes this Ordinance and all laws and regulations relating to Customs in force within the Territory ;

“ Days ” does not include Sundays or public holidays ;

“ Documents ” includes books ;

" Drawback " means a repayment of the duty under the provisions of the Customs Ordinances upon goods on exportation. The term " drawback " includes bounty or allowance ;

" Dutiable goods " includes all goods in respect of which any duty of Customs is payable ;

" Explosives " means nitro-glycerine, dynamite, gun-cotton, blasting-powder, fulminate of mercury or other metals, and every other explosive substance being any compound of, or having any ingredients in common with, any of the above, and not being gunpowder, percussion caps, rockets, or fuses, but including fireworks ;

" Exportation " or " exporting " means the conveyance of goods across the frontier to a foreign port or from a port in the Territory to a foreign port ;

" Foreign port " means any place beyond the limits of the Territory or of the Uganda Protectorate ;

" Gazette " means the Official Gazette of the Colony and Protectorate of Kenya.

" Goods " includes all kinds of movable or personal property including animals ;

" Goods under drawback " includes all goods in respect of which any claim for drawback has been made ;

" Government warehouse " means any place provided by the Government and approved by the Commissioner for the storing of goods entered to be warehoused ;

" Importation " or " importing " means the bringing of goods into or within the Territory by sea, air or land from a foreign port ;

" King's warehouse " means any place approved by the Commissioner for the deposit of goods for the security thereof and of the duties due thereon ;

" Licensed warehouse " means any warehouse licensed for the deposit of dutiable goods on which duty has not been paid ;

" Licensed " means licensed by the Commissioner ;

" Master " means the person in charge or command of any ship except a pilot ;

" Officer " includes all persons employed in the service of the Customs other than labourers, and also includes any Government officer for the time being performing duties in relation to the Customs.

“ Owner ” in respect of a ship includes every person acting as agent for the owner or who receives freight or other charges payable in respect of the ship ;

“ Owner ” in respect of goods includes any person (other than an officer of Customs acting in his official capacity) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person in possession of, or beneficially interested in, or having any control of, or power of disposition over the goods ;

“ Parts beyond the seas ” means any country or place outside the Colony and Protectorate of Kenya and the Uganda Protectorate ;

“ Package ” includes every means by which goods for carriage may be cased, covered, enclosed, contained or packed ;

“ Port ” means any established port ;

“ Prescribed ” means by Regulations ;

“ Sea ” includes any lake, part of which is outside the limits of the Territory ;

“ Ship ” includes every description of vessel used in navigation not propelled by oars only ;

“ Smuggling ” means any importation, exportation, or carriage coastwise, or attempted importation, exportation, or carriage coastwise, of goods with intent to defraud the revenue or to evade any prohibition of, restriction on, or regulation as to the importation, exportation or carriage coastwise of any goods ; and “ smuggle ” and “ smuggled goods ” have corresponding meanings ;

“ Territory ” means the Colony and Protectorate of Kenya and the territorial waters thereof ;

“ The Customs ” means the Department of Customs ;

“ This Ordinance ” includes all regulations made thereunder ;

“ Transit warehouse ” means any warehouse appointed by the Commissioner for the landing and assortment of goods (subject to the control of the Customs) for delivery to the consignee or for shipment ;

“ Wharf ” means a place for the landing or shipment of goods appointed for the purposes of this Ordinance ;

“ Wharf-owner ” includes any owner or any occupier of any wharf.

4. Whenever by this Ordinance any person is required to answer any question, such person shall, to the best of his knowledge, information and belief, truly answer any such question that may be asked. Obligation to answer questions

5. Whenever by this Ordinance any person is required to produce documents, such person shall, to the best of his power, produce to the collector all documents relating to the subject-matter mentioned. Obligation to produce documents.

PART II.—ADMINISTRATION.

6. There shall be a Commissioner who shall be the permanent head of the Customs and shall, under the Governor, have the chief control of the Customs throughout the Territory. Commissioner.

7. The Commissioner shall have the control and management of the collection of duties and of matters incidental thereto and of the officers and persons employed in the Customs Department, subject to any law governing public service in the Territory or any regulation in force under such law. Powers of Commissioner.

8. In relation to any particular matters or class of matters or to any particular province or district, the Commissioner may, with the consent of the Governor, by writing under his hand, delegate any of his powers under any Customs Ordinance (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the province or district defined in the instrument of delegation. Delegation by Commissioner.

9. A delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Commissioner. Revocation of delegation.

10. All persons acting in the service of the Customs at the commencement of this Ordinance shall be deemed to have been duly appointed. Continuance of officers.

11. The seal of the Customs shall be the seal in use at the commencement of this Ordinance, until a further or other seal be prescribed. Such seal shall be judicially noticed. Customs seal.

- Customs flag. **12.** The vessels and boats employed in the service of the Customs shall be distinguished from other vessels and boats by such flag as shall be prescribed.
- Appointment of boarding stations, etc. **13.** The Governor may, by notice in the Gazette—
 (a) appoint boarding stations for the boarding of ships by officers ;
 (b) establish ports and fix their limits ;
 (c) appoint wharves within ports and fix their limits.
- Appointment of ports and wharves. **14.** Ports and wharves may be established or appointed for specified limited purposes or without any such limitation.
- Appointment of sufferance wharves, etc. **15.** The Commissioner may, by notice in the Gazette—
 (a) appoint sufferance wharves in any port ;
 (b) appoint places for the examination of goods.
- Continuance of boarding stations, etc. **16.** All boarding stations, ports, wharves, and examination places in actual use by authority at the commencement of this Ordinance shall continue as if established or appointed under this Ordinance.
- Accommodation on wharves. **17.** Every wharf-owner shall provide to the satisfaction of the collector suitable office accommodation on his wharf for the exclusive use of the officer employed at the wharf, also such shed accommodation for the protection of goods as the Commissioner may in writing declare to be requisite.
 Penalty : Twenty pounds.
- Before whom declarations may be made. **18.** Declarations under this Ordinance may be made before the person presiding over any court or before any notary public, commissioner for oaths, or collector, and also before any officer authorised in that behalf by the Commissioner.
- Declaration by youths. **19.** No person shall knowingly receive a declaration made under this Ordinance by any person under the age of eighteen years.

20. The working days and hours of the Customs shall be as prescribed, and except when working overtime is permitted by the collector, cargo shall only be received, loaded, or worked on, or discharged from any ship on working days and during working hours. Working days and hours.

Penalty : Fifty pounds.

21. When working overtime is permitted overtime at prescribed rates shall be charged for the services of the officers, and when the attendance of officers at unappointed places is permitted attendance fees at prescribed rates shall be charged. Overtime charges.

PART III.—CUSTOMS CONTROL, EXAMINATION, ENTRIES, AND SECURITIES GENERALLY.

22. Goods shall be subject to the control of the Customs as follows :— Customs control of goods.

- (a) As to all goods imported, from the time of importation until delivery for home consumption or until exportation whichever shall first happen.
- (b) As to all goods under drawback, from the time of the claim for drawback until exportation.
- (c) As to all goods subject to any export duty, from the time when the same are brought to any port or place for exportation until the payment of the duty.
- (d) As to all goods for export, the exportation of which is subject to compliance with any condition or restriction under any Ordinance, from the time the goods are made or prepared in, or are brought into, any prescribed place for export, until their exportation.

23. All goods on board any ship or boat from parts beyond the seas shall also be subject to the control of the Customs whilst the ship or boat is within the limits of any port in the Territory. Goods on ships subject to Customs control.

24. The control of the Customs especially includes the right of the Customs to examine all goods subject to such control. Right of examination.

25. All the expenses of any examination of goods shall be borne by the owner. Cost of examination.

Customs control
of goods.

26. No goods subject to the control of the Customs shall be moved, altered, or interfered with except by authority and in accordance with this Ordinance.

Penalty : One hundred pounds.

No claim for
compensation
for loss.

27. Neither the Customs nor the Government shall be liable for any loss or damage occasioned to any goods subject to the control of the Customs except by the wilful act of some officer.

Goods imported
through post.

28. Goods imported through the Post Office shall be subject to the control of the Customs equally with goods otherwise imported.

Procedure
respecting
postal packets

29. When goods are imported into the Territory through the Post Office the declaration form or label affixed to the package under the Postal Regulations may, at the Commissioner's discretion, be accepted in lieu of the entry required under the provisions of this Ordinance, and the account of the contents, value and other particulars entered on such declaration form or label and signed by the sender may, subject to Customs verification, be accepted for the purpose of assessing the duty payable. All goods contained in any packets imported by post and found not to agree with the particulars entered on the declaration form or label shall be liable to forfeiture.

Entries.

30. Entries may be made and passed for all goods subject to the control of the Customs.

Owner to make
entry.

31. Entries shall be made by the delivery of the entry with the prescribed number of duplicates thereof by the owner to the collector.

Power to allow
special entries.

32. The Commissioner may permit the entry of any goods in such form and manner and on such conditions as he may direct, to meet the exigencies of any case to which the provisions of any laws relating to the Customs are not strictly applicable.

Person making
entries to
answer
questions.

33. Any person making any entry shall, if required by the collector, answer questions relating to the goods referred to in the entry.

Collector to
pass entry.

34. Entries shall be passed by the collector signing the entry, and on passing of the entry the goods shall be deemed to be entered, and any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

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35. All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry.

Goods to be dealt with according to entry.

Penalty : Fifty pounds.

36. Goods being the personal baggage of passengers in any ship may, subject to any prescribed conditions, be imported or exported without entry.

Passengers' baggage.

37. Goods may be imported or exported by inland carriage or navigation or by air subject to the prescribed regulations.

Inland carriage and navigation.

Penalty : One hundred pounds.

38. The Commissioner shall have the right to require and take securities for compliance with this Ordinance and generally for the protection of the revenue of the Customs, and pending the giving of the required security in relation to any goods subject to the control of the Customs may refuse to deliver the goods or to pass any entry relating thereto.

Right to require security.

39. Where any security is required to be given, such security may be by bond or guarantee or cash deposit or all or any of such methods so that in each case the security shall be approved by the collector.

Nature of security.

40. When security is required for any particular purpose, security may by the authority of the Commissioner be accepted to cover all transactions for such time and for such amount as the Commissioner may approve.

General bonds may be given.

41. All Customs securities may, after the expiration of three years from the date thereof or from the time specified for the performance of the conditions thereof, be cancelled by the Commissioner.

Cancellation of bonds.

42. If the collector shall not at any time be satisfied with the sufficiency of any security the collector may require a fresh security and a fresh security shall be given accordingly.

New securities.

43. The form of Customs security in the Schedule to this Ordinance shall suffice for all the purposes of a bond or guarantee under this Ordinance, and, unless otherwise provided therein, shall bind its subscribers jointly and severally for the full amount.

Form of Customs security.

Effect of
Customs
security.

44. Whenever any such Customs security is put in suit by the Commissioner, the production thereof without further proof shall entitle the Commissioner to judgment for their stated liability against the persons appearing to have executed the same, unless the defendants shall prove compliance with the condition or that the security was not executed by them or shall prove release or satisfaction.

Issue of
permits.

45. All permits shall be issued subject to such conditions as may be prescribed, and may be revoked, altered, or suspended by the collector.

PART IV.—THE IMPORTATION OF GOODS.

Importation.

46. For the purposes of securing the importation of goods—

- (1) the ship may be boarded ;
- (2) the cargo shall be reported ;
- (3) the goods shall be entered, unshipped, and may be examined.

DIVISION I.—PROHIBITED AND RESTRICTED IMPORTS.

Power to
prohibit
imports.

47. (1) The Governor may if he thinks fit, from time to time, by order published in the Gazette, prohibit, restrict, or regulate the importation, whether by land, air or sea, into the Territory or any area or place therein of any goods or class of goods.

(2) An order under this section may specify any goods or class of goods, either generally or in any particular manner, whether with reference to the country of origin or the route of importation or otherwise.

Prohibited
imports.

48. No prohibited imports shall be imported.

Penalty : One hundred pounds.

The following are prohibited imports :—

- (a) Goods the importation of which is prohibited by or under the authority of this Ordinance or any law for the time being in force in the Territory.

- (b) False money and counterfeit sterling, coin of the realm, and any money purporting to be such, not being of the established standard in weight or fineness.
- (c) Indecent or obscene prints, paintings, books, cards, lithographic or other engravings or any other indecent or obscene articles.
- (d) Manufactured articles bearing the name, address or trade mark of any manufacturer or dealer, or the name of any place in the United Kingdom or any British possession, calculated to impart to them a special character of British manufacture, and not of such manufacture.
- (e) Matches in the manufacture of which white phosphorus has been employed.
- (f) Any article marked without the authority of His Majesty with the Royal Arms or monogram, or arms or monogram so closely resembling the same as to be calculated to deceive.

49. Goods of which the importation is for the time being restricted or regulated by or under the authority of this Ordinance or any law for the time being in force in the Territory (in this Ordinance referred to as restricted or regulated imports) shall not be imported except in accordance with the restrictions or regulations applicable.

Restricted imports.

Penalty : One hundred pounds.

50. If an offence against section 48 or section 49 is committed while a state of war exists in which His Majesty is engaged, the penalty shall extend to five hundred pounds or imprisonment of either description for two years.

Increase of penalties in war time.

51. Merchandise on board a ship calling at any port in the Territory, but intended for and consigned to some port or place outside the Territory, shall not be deemed to be unlawfully imported into the Territory if the goods are specified on the ship's manifest and are not transhipped or landed in the Territory or are transhipped or landed by authority.

Prohibited imports consigned to places outside the Territory.

DIVISION II.—THE BOARDING OF SHIPS.

Ships to enter
ports.

52. The master of a ship shall not suffer his ship to enter any place other than a port unless from stress or weather or other reasonable cause.

Penalty : One hundred pounds.

Ship to bring to
on being
signalled.

53. The master of every ship within three nautical miles of the coast shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Government of the Territory having hoisted the proper ensign and pennant.

Penalty : One hundred pounds.

Ship to bring to
at boarding
station.

54. The master of every ship from parts beyond the seas bound to or calling at any port shall bring his ship to for boarding at the boarding station appointed for that port.

Penalty : Fifty pounds.

Facility for
boarding.

55. The master of every ship bringing to for boarding shall by all reasonable means facilitate boarding by the officer.

Penalty : Twenty pounds.

Ship to come
quickly to place
of unloading.

56. The master of every ship after his ship has been brought to at the boarding station and boarded by the officer shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

Penalty : Twenty pounds.

Ship not to be
moved without
authority.

57. No ship after arrival at the proper place of mooring or unloading shall, except by authority or by direction of the harbour authority, be removed therefrom before the discharge of the cargo intended to be discharged at the port shall have been completed.

Penalty : Twenty pounds.

Restriction on
boarding ship
before Customs
officer.

58. No person, except the port pilot and the health officer or person duly authorised by him, shall board any ship before the proper officer of Customs.

Penalty : Ten pounds.

DIVISION III.—THE REPORT OF THE CARGO.

59. The master or a responsible officer of the ship Report of cargo.
delegated by the master or the owner of every ship arriving
from parts beyond the seas shall—

- (a) within twenty-four hours after arrival at any port
make report of the ship and her cargo by delivering
to the collector an inward manifest of goods on
board;
- (b) answer questions relating to the ship and her cargo,
crew, passengers, stores and voyage;
- (c) produce documents relating to the ship and her cargo.

Penalty : One hundred pounds.

60. The Commissioner shall permit the master or owner Amendment, of
inward report.
of any ship to amend any obvious errors in the manifest or
to supply any omission which in the opinion of the Commis-
sioner results from accident or inadvertence by furnishing an
amended or supplementary manifest, and the Commissioner
may, if he thinks fit, levy thereon such fee as may be
prescribed. Except as herein provided no import manifest
shall be amended.

61. When any ship is lost or wrecked upon the coast, Master of
wrecked ship
to report.
the master or owner shall, without any unnecessary delay,
make report of the ship and cargo by delivering to the collector
a manifest, so far as it may be possible for him to do so, at
the Customs House nearest to the place where the ship was
lost or wrecked, or at the Chief Customs Office of the Territory.

Penalty : Twenty pounds.

DIVISION IV.—THE ENTRY, UNSHIPMENT, LANDING AND
EXAMINATION OF GOODS.

62. All imported goods shall be entered in the prescribed Kinds of
entries.
form either—

- (a) for home consumption;
- (b) for warehousing;
- (c) for transshipment; or
- (d) for transit.

Provisional
entry.

63. If the owner cannot immediately supply the full particulars for making an entry and shall make a declaration to that effect before the collector, he may make a provisional entry and deposit a sum sufficient to cover the duty involved.

Passing of
provisional
entry.

64. A provisional entry on being passed by the collector shall be warrant for the landing and examination of the goods : Provided that delivery of the goods may be made as prescribed.

Perfect entry
within three
months.

65. (1) The owner of goods included in a provisional entry shall, within three months after the passing of the entry or within such further time, if any, as the collector may see fit to allow, make complete entry thereof.

(2) A complete entry of the goods included in a provisional entry shall be made in such a manner as if the provisional entry had not been made.

Passing of
entry.

66. Entries shall be made of the whole of any cargo unshipped or to be unshipped within such time after the report of the ship as may be prescribed, or within such further time, if any, as the collector may see fit to allow.

(a) If default shall be made in the entry of any goods pursuant to this section, the collector may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within three months after such removal, the goods may be sold by the collector.

(b) If the goods are of a perishable nature they may be sold at any time the collector thinks fit either before or after warehousing.

Breaking bulk.

67. The bulk cargo of a ship arriving within three nautical miles of the coast shall not be broken, except with the permission of the collector, or as regards goods for which entry has been passed.

Penalty : One hundred pounds.

Authority for
unshipment.

68. Except as prescribed, goods may be unshipped only pursuant to—

(1) a collector's permit, general or special; or

(2) an entry passed.

Penalty : One hundred pounds.

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69. Boats and lighters may be licensed for the carriage of goods subject to the control of the Customs upon payment of such fees and subject to such conditions as may be prescribed.

Licences for
boats and
lighters.

70. The Commissioner may revoke any or all of such licences when and as he shall think fit, and before granting any such licence may require such security by bond or otherwise as he shall deem necessary.

Revocation of
licences.

71. Except as prescribed, no person shall use any unlicensed boat or lighter for the conveyance of goods subject to the control of the Customs.

Use of
unlicensed
boats or
lighters.

Penalty : Twenty pounds.

72. All goods unshipped shall be either—

Unshipment of
goods.

(a) landed directly at the wharf or after conveyance thereto in a licensed boat or lighter from the ship, unless the collector shall permit the landing elsewhere than at a wharf of any goods; or

(b) transhipped direct to the ship into which they are to be transhipped or after conveyance thereto in a licensed boat or lighter direct from the importing ship.

Penalty : One hundred pounds.

73. Goods unshipped and landed under a collector's permit shall be placed in a transit shed or a place of security approved by the collector and shall be deemed to be still in the ship; and so long as they remain in such shed or warehouse the owners or agents of the ship shall not be relieved from any responsibility, liability or risk in respect thereof, but shall remain responsible and liable therefor in all respects as if the goods had not been removed from the ship and were still therein.

Goods landed on
permit at ship's
risk.

74. Any goods may by authority be repacked or skipped on the wharf.

Repacking on
wharf

PART V.—THE WAREHOUSING OF GOODS.

DIVISION I.—LICENSED WAREHOUSES.

Dutiable goods
may be ware-
housed.

75. Dutiable goods except as prescribed may be warehoused in warehouses licensed by the Commissioner subject to the prescribed conditions.

Conditions in
licences.

76. The Commissioner may specify in such licence in what manner any goods and what sort of goods may and may only be warehoused.

Classes of
warehouses.

77. There may be two classes of licensed warehouses as follows :—

Class I.—General warehouses to be used for warehousing goods generally.

Class II.—Private warehouses to be used only for warehousing goods the property of the licensee.

Annual fees.

78. Fees for warehouse licences according to a scale prescribed shall be paid by the licensee in advance on the first day of January in each year.

Penalty for
continuing
warehouse
without licence.

79. The proprietor or occupier of any licensed warehouse who fails to renew the licence and continues to warehouse goods thereunder after the expiration of such licence shall be liable to a fine of five pounds for every day or part of a day during which he shall continue so to warehouse goods without licence.

Cancellation of
licence by
Commissioner.

80. The Commissioner may by notice in the Gazette cancel the licence—

(a) in default of payment of any part of the licence fee ; or

(b) where the owner or keeper of the warehouse has been convicted of a breach of any Customs Ordinance or revenue law or has become a bankrupt.

Cancelling by
Governor.

81. The Governor may at any time, for good cause, cancel a licence.

82. Whenever a licence is cancelled—

Effect of
cancellation of
licence.

(a) the duties on the warehoused goods shall be paid, or the goods shall be exported or removed to another approved warehouse within such time as the collector shall direct. Goods not so cleared or removed shall be taken by the collector to the King's warehouse at the owner's expense and sold.

(b) the warehouse shall cease to be a licensed warehouse unless relicensed under this Ordinance.

83. All warehouses licensed at the commencement of this Ordinance shall be deemed to be similarly licensed under this Ordinance, but unless actually licensed under this Ordinance such warehouses shall cease to be licensed on the expiration of the period for which the last payment of licence fee was made prior to the commencement of this Ordinance.

Continuation of
existing
licences.

84. Upon the landing of any goods to be warehoused, or so soon as practicable thereafter, the officer shall take a particular account of the goods and shall enter such account in a book.

Officer to take
account of
goods landed to
be warehoused.

Unless where otherwise provided, such account shall be that upon which the duties shall be ascertained and paid.

85. When any goods entered for warehousing have been duly deposited in the warehouse, the officer shall certify that the warehousing is complete by signing a receipt for the goods.

Completion of
warehousing.

86. If any goods entered to be warehoused are not warehoused accordingly by the owner, the collector may remove them to the warehouse.

Removal
of goods to
warehouse.

The licensee of the warehouse shall pay all charges for the removal of goods removed by the collector and shall have a lien on the goods for such charges.

87. Goods entered for warehousing shall be deposited in the warehouse in the packages in which they were imported, except goods repacked or skipped on the wharf which shall be deposited in the packages in which they were when the account was taken.

Packages in
which goods
to be deposited.

Duty of
licensee.

88. The licensee of every warehouse shall—

- (1) stack and arrange the goods in the warehouse so that reasonable access to and examination of every package may be had at all times;
- (2) provide sufficient lights and just scales and weights for the use of the officer;
- (3) find all labour and materials requisite for the storing, examining, packing, marking, cooping, weighing, and taking stock of the warehoused goods whenever the collector may desire;
- (4) pay the duty on all warehoused goods removed from his warehouse except by authority and on all warehoused goods not produced to the officer on demand unless such goods are accounted for to the satisfaction of the collector.

Penalty : Twenty pounds.

Opening
warehouse.

89. No person shall, except by authority, open any warehouse or gain access to the goods therein.

Penalty : One hundred pounds.

Collector may
order removal
of goods from
private to
general
warehouse.

90. The collector may require the owner of any goods in any private warehouse, within a time to be specified by him, to remove them to some general warehouse or to pay the duty thereon, and if the order is not complied with the goods may be sold by the collector.

Period of
warehousing.

91. Goods warehoused in any warehouse for two years shall, if not removed therefrom or re-warehoused, be sold by the collector.

Re-warehousing.

92. Re-warehousing shall be effected as follows :—

- (a) An application for re-warehousing shall be made by the owner to the collector.
- (b) The goods shall be examined by the officer at the expense of the owner.
- (c) Duty shall be paid on any disallowed deficiency.
- (d) A re-warehousing entry shall be made by the owner for the goods, according to the result of the examination.

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- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the re-warehousing.

93. Warehoused goods may be permitted to be taken out of the warehouse without payment of duty for the purpose of public exhibition or any similar purpose for such convenient time and in such suitable quantities as may be prescribed by the Commissioner subject to security for the return of the goods or for payment of the duty.

Goods for exhibition.

94. The collector at all hours of the day or night shall have access to any part of any warehouse and power to examine the goods therein and for that purpose to break open the warehouse or any premises necessary to be passed through to secure access.

Collector to have access to warehouse.

95. Warehoused goods may be regauged, remeasured, reweighed, or examined by the officer, either by direction of the collector or at the request and expense of the owner, and duty shall be payable according to the result, unless the collector is of opinion that any loss shown is excessive, in which case the duty shall be paid on the original entry with any reduction which the collector may see fit to allow :

Regauging or reweighing of goods.

Provided that no allowance shall be made for any deficiency on wines or spirits in bottles.

96. The collector may permit moderate samples to be taken by the importer of any warehoused goods without entry and, save in so far as duty may eventually become payable as on the deficiency on the original quantity, without payment of duty.

Sampling of warehoused goods.

97. The collector may allow the owner or other person having control of warehoused goods to sort, separate, pack and repack such goods and to make such lawful alterations therein or arrangements and assortments thereof as may be necessary for the preservation of such goods or in preparation for the sale, shipment or legal disposal of the same and also to permit any part of such goods so separated and not worth the duty thereon to be destroyed without payment of duty on the portion so destroyed.

Operations in warehouse.

Revaluation.

98. Warehoused goods subject to an *ad valorem* duty which have deteriorated in quality may be revalued on the application of the owner, and duty shall be paid according to the result if the collector is satisfied that the deterioration has been accidentally caused.

Goods not worth duty may be destroyed.

99. The Commissioner may cause any warehoused goods which in the opinion of the collector are not worth the duty payable thereon to be destroyed and may remit the duty.

The owner of any goods destroyed shall pay to the licensee of the warehouse, or to the collector in case the goods were in a King's warehouse or Government warehouse, the charges payable in respect of the destroyed goods.

Combustible or inflammable goods.

100. No goods of a readily combustible or inflammable nature shall be warehoused except by permission of the collector, and if any such goods shall be landed the same may be deposited in any safe available place that the collector shall approve, and whilst so deposited the same shall be deemed to be in a King's warehouse and be liable to be sold by the collector in the same manner as goods of a perishable nature deposited in a King's warehouse unless duly cleared or warehoused in some warehouse with the approval of the collector, and such goods shall be charged with the expenses for removing, securing, watching, and guarding the same until sold.

Penalty : One hundred pounds.

Entry of warehoused goods.

101. Warehoused goods may be entered—

- (a) for home consumption ;
- (b) for export to parts beyond the seas ;
- (c) for removal for warehousing elsewhere.

Constructive warehousing

102. If, after goods have been entered for warehousing either on importation or removal and before they have been actually warehoused, they shall be entered for home consumption, exportation or removal, the goods so entered shall be considered as constructively warehoused and may be delivered for home consumption, exportation or removal as if actually warehoused.

DIVISION II.—KING'S WAREHOUSES AND GOVERNMENT
WAREHOUSES.

103. King's warehouses and Government warehouses may be appointed by the Commissioner by notice in the Gazette. King's warehouses.

104. Fees shall be paid in respect of any goods warehoused or deposited in any King's warehouse or Government warehouse according to such scale as may be prescribed. Fees for goods deposited.

105. All fees shall be paid before the removal of the goods. Fees to be paid before removal of goods.

106. If any goods deposited in a King's warehouse shall not be lawfully removed within three months after deposit, the goods may be sold by the collector. Perishable goods may be sold at any time the collector may think fit. Power to sell.

107. King's warehouses and Government warehouses shall be wholly under the control of the Customs. King's warehouses shall be specially available for the examination of goods and the storage of seized and unclaimed goods, but otherwise all the provisions of this Ordinance relating to warehouses shall so far as practicable apply to King's warehouses and Government warehouses. Purposes of King's warehouses.

108. The Commissioner may refuse to allow delivery of any goods deposited in a King's warehouse or Government warehouse until he has been furnished with satisfactory proof that the freight, removal charges and rent due in respect of the goods have been paid. Payment of charges.

DIVISION III.—TRANSIT WAREHOUSES.

109. Goods deposited in a transit warehouse shall remain under the charge of the shipowner, subject to such control by the Customs as may be prescribed. Control of transit warehouses.

PART VI.—EXPORTATION OF GOODS.

110. Goods originating in the Uganda Protectorate and exported from any port in the Territory shall be subject to the duties, restrictions, and conditions provided by this or any other law relating to the Customs. Export of Uganda produce.

Power to
prohibit
exports

111. (1) The Governor may if he thinks fit, from time to time, by order published in the Gazette, prohibit, restrict, or regulate the exportation from the Territory or from any area or place therein of any goods or class of goods.

(2) An order under this section may specify any goods or class of goods, either generally or in any particular manner, and may prohibit, restrict, or regulate the exportation either to all places or to any particular country or place, and may require any goods to be consigned to a person authorised by the order to receive the goods, and may require the production within a named time of evidence to the satisfaction of the Commissioner of the due delivery of the goods to such consignee.

Prohibited
exports.

112. (1) No prohibited exports shall be exported.

Penalty : One hundred pounds, and if the offence is committed whilst a state of war in which His Majesty is engaged exists, the penalty shall extend to five hundred pounds or imprisonment of either description for two years.

(2) Prohibited exports are any goods the export of which is for the time being prohibited by or under the authority of this Ordinance or any law for the time being in force in the Territory.

Restricted
exports.

113. Goods of which the export is for the time being restricted or regulated by or under the authority of this Ordinance or any law for the time being in force in the Territory (in this Ordinance referred to as restricted or regulated exports) shall not be exported except in accordance with the restrictions or regulations applicable.

Penalty : One hundred pounds, and if the offence is committed whilst a state of war in which His Majesty is engaged exists, the penalty shall extend to five hundred pounds or imprisonment of either description for two years.

Tonnage of
export ship.

114. Warehoused, drawback, or transshipment goods shall not be exported in vessels of less than ten registered tons.

Penalty : One hundred pounds.

Conditions for
export.

115. Before any goods are taken on board a ship for export, the goods shall be entered for export in the prescribed manner.

116. Goods subject to the control of the Customs for exportation or removal coastwise shall be shipped either directly at a wharf or after conveyance to the ship in a licensed boat or lighter direct from a wharf. Goods to be shipped at wharf.

Penalty : One hundred pounds.

117. If any goods entered for export are not shipped according to the entry-- Short-shipped goods.

- (1) the owner shall immediately report the fact to the officer and amend his entry for the goods;
- (2) the goods if dutiable shall forthwith be warehoused or re-entered for subsequent exportation.

Penalty : Twenty pounds.

118. The collector may require the owner to produce documents for any goods entered for export, and in the case of goods subject to the control of the Customs to give security that the same will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the collector. Documents and security.

119. The master of any ship shall not depart with his ship from any port without receiving from the collector a certificate of clearance. Certificate of clearance.

Penalty : One hundred pounds.

120. Before any certificate of clearance shall be granted, the master or owner of the ship shall make due report outwards as prescribed, and-- Requisites for obtaining clearance.

- (a) in the case of vessels of less than three hundred registered tons deliver to the collector an outward manifest;
- (b) answer questions relating to the ship and her cargo, crew, passengers, stores and voyage;
- (c) produce documents relating to the ship and her cargo.

121. Subject to the provisions of the last preceding section, the master, owner or agent of the ship shall, within twenty-four hours after final clearance, deliver to the collector an outward manifest. Deposit of manifest.

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Shipment of
unspecified
goods.

122. The master of any ship shall not suffer any goods, other than passengers' baggage not specified or referred to in the outward manifest, to be taken on board his ship, except as provided in section 115.

Penalty : Fifty pounds.

Amendment of
report.

123. The Commissioner shall permit the master or owner of any ship to amend any obvious error in the manifest or to supply any omission which in the opinion of the Commissioner results from accident or inadvertence by furnishing an amended or supplementary manifest in the prescribed manner.

Conditions for
clearance.

124. No certificate of clearance shall be granted for any ship unless all her cargo and stores from parts beyond the seas have been duly accounted for to the satisfaction of the collector, nor unless all the other requirements of the law in regard to such ship and her inward and outward cargoes have been duly complied with.

Ship to bring to
at proper
stations.

125. The master of every ship departing from any port shall bring his ship to, if required, at the boarding station appointed for the port and by all reasonable means facilitate boarding by the officer, and shall not depart with his ship from any port with any officer on board such ship in the discharge of his duty without the consent of such officer.

Penalty : One hundred pounds.

Master to
account for
missing goods.

126. The master of every ship after clearance shall—

(a) on demand by an officer produce the certificate of clearance;

(b) account to the satisfaction of the collector for any goods specified or referred to in the outward manifest and not on board his ship.

Penalty : One hundred pounds.

Goods exported
to be landed at
proper
destination.

127. No goods shipped for export shall be unshipped or landed without the permission of the collector except in parts beyond the seas.

Penalty : One hundred pounds.

128. If required by the Commissioner a certificate from the Chief Customs Officer at the port of destination shall be produced by the exporter in proof of the due landing according to the export entry of any goods subject to the control of the Customs, and the collector may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce such certificate of the landing of any such goods previously exported by him or to account for such goods to the satisfaction of the collector.

Certificate of landing.

PART VII.—SHIPS' STORES.

129. Ships' stores, whether shipped in parts beyond the seas or in the Territory, unless entered for home consumption, or except as prescribed, shall only be used by the passengers and crew and for the service of the ship.

Use of ships' stores.

130. No ships' stores shall be used contrary to the last preceding section or shall be unshipped except by permission of the collector.

Relanding ships' stores.

Penalty : Fifty pounds.

131. Ships' stores shipped from warehouse without payment of duty, or shipped on drawback, must remain under Customs seal whilst the vessel is in any port or place in the Territory or on her passage from one such port or place to another before her final departure on a foreign voyage.

Ships' stores under seal.

Penalty : Fifty pounds.

132. Surplus ships' stores may on the permit of and at the discretion of the collector be entered in like manner as merchandise or warehoused for future use as ships' stores.

Surplus stores may be landed on permit.

PART VIII.—THE DUTIES.

DIVISION I.—THE PAYMENT AND COMPUTATION OF DUTIES GENERALLY.

133. Goods imported and intended for transmission to the Uganda Protectorate shall be deemed to be goods imported for consumption within the Territory and shall be liable to the like duties, restrictions and conditions as provided by this or any other law relating to Customs.

Goods for the Uganda Protectorate.

Goods not liable
to import duty.

134. Customs import duties shall not be levied on the following goods :—

- (a) Goods originating in the Uganda Protectorate.
- (b) Goods imported into the Territory from the Uganda Protectorate on which duty has been paid on importation into the Uganda Protectorate.
- (c) Goods which are proved to have been produced or manufactured within the Territory.
- (d) Goods re-imported into the Territory on which no drawback has been allowed on exportation :

Provided that in cases where goods are re-imported after alteration, renovation or repair, duty shall be chargeable on the cost of such alteration, renovation or repair effected in parts beyond the seas.

Sale of Crown,
etc., goods.

*unless the Governor
otherwise directs,
1.1.47.*

135. (1) All goods which have been imported free of duty on the ground that they are the property of the Crown, or of an officer of the Government, or of any company, firm or individual privileged by contract or otherwise to import such goods free of duty shall, in case of the sale thereof, be liable to and be charged with the same duties as may be payable on the importation of similar goods not being the property of the Crown or of such officer, company, firm or individual.

*unless the Governor
otherwise directs
1.1.47.*

(2) The officer of a public department in whose charge such goods may be sold or whoever shall cause such goods to be sold shall furnish the Commissioner with particulars of the sale thereof and out of the proceeds of the sale pay to the Commissioner the duties which may be due thereon.

Time for
ascertaining
rate of import
duties.

136. All import duties shall be paid at the rate in force when the goods are entered for home consumption.

Export duties.

137. All export duties shall be paid at the rate in force when the goods are entered for export.

Weights and
measures.

138. Where duties are imposed according to weight or measure, the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

Allowance for
tare and draft.

139. Allowances for tare and draft shall be made as prescribed.

140. Where duties are imposed according to a specified Proportion quantity, weight, size or value, the duties shall apply in proportion to any greater or lesser quantity, weight, size or value.

141. Whenever goods are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity, duties shall be charged according to such first-mentioned size or quantity. Duty, how fixed.

142. Duties shall be paid or secured in the manner and at the port or place prescribed, unless the Commissioner otherwise allows. Duties, where payable.

143. If any goods are or can be classed under two or more names, headings, or descriptions, with a resulting difference as to duty, duty shall be charged when it is a difference between liability to or freedom from duty, and the higher or highest of the duties applicable shall be charged when it is a difference as to two or more duties. Highest duties to be charged.

144. Goods composed of any article liable to duty as a part or ingredient thereof and not chemically forming another distinct substance shall, at the discretion of the Commissioner, be chargeable with the full duty payable on that article, and as if such article formed the whole composition; if composed of more than one article liable to duty then with the full duty payable on the article charged with the highest rate of duty and as if such article formed the whole composition. When goods composed of two or more materials.

145. Goods charged with duty by measurement shall at the expense of the owner be heaped, piled, sorted, framed, or otherwise placed in such manner as the collector may require to enable the measurement and account thereof to be taken; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile. Measurement for duty.

146. When the duty on any goods sold at any collector's sale shall be *ad valorem*, the value of such goods shall, if approved by the collector, be taken to be the value as shown by the sale. Value of goods sold.

Derelict goods
dutiabie.

147. All goods derelict, flotsam, jetsam, or lagan, or landed, saved, or coming ashore from any wreck, or sold as droits of Admiralty, shall be charged with duty and shall be subject to the same conditions as if imported in the ordinary course.

As to payment
of duty on
goods in
manifest but
not produced
or landed.

148. If any dutiable goods which are included in the report of any ship shall not be produced to the officer, the master or owner of the ship shall, on demand by the collector, pay the duty thereon as estimated by the collector unless the goods are accounted for to the satisfaction of the collector.

Samples.

149. Small samples of the bulk of any goods subject to the control of the Customs may, subject to the prescribed conditions, be delivered free of duty.

Alteration of
agreements
where duty
altered.

150. If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, then, in the absence of express written provision to the contrary, the agreement shall be altered as follows :—

- (a) In the event of the alteration being a new or increased duty, the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.
- (b) In the event of the alteration being the abolition or reduction of duty, the purchaser may deduct the difference caused by the alteration from the agreed price.
- (c) Any payment of increased duty or refund resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

Recovery of
duties.

151. All duties shall constitute Crown debts charged upon the goods in respect of which same are payable and be payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the collector.

DIVISION II.—INVOICES.

152. With the entry of any goods there shall be delivered to the collector the original invoices, bills of lading, bills of parcels or other such documents showing the value of the articles at the place at which they were purchased together with the freight, insurance and other charges on the same.

Delivery of invoice with entry.

Penalty : One hundred pounds.

153. Invoices required under the last preceding section shall, at the discretion of the Commissioner, be submitted in duplicate, one copy of which shall be retained and filed as the Commissioner may direct.

Invoices.

Penalty : One hundred pounds.

154. All invoices and certificates thereto relating to goods imported into the Territory shall contain such particulars as may be prescribed by Regulations, and the Commissioner may refuse to accept any invoice or certificate in respect of which the Regulations are not complied with.

Particulars on invoices.

155. Where the invoice cost is not expressed in sterling the Commissioner shall fix the rate at which the invoice cost shall be converted for the purposes of the Customs Ordinances.

Conversion of cost not expressed in sterling.

156. The Commissioner at his discretion may require the owner to state the place and date of purchase, and the name and style of the firm from whom the goods are purchased, or any other information he may deem necessary for the purpose of ascertaining the accuracy of the value for duty as shown in any invoice.

Commissioner may require special information.

Penalty : One hundred pounds.

157. Whenever the collector has a doubt as to the accuracy of the declared value of the dutiable goods, he may detain such goods and assess the value thereof.

Value may be assessed.

Should the owner object to the value so assessed he may request that the value may be ascertained by experts in the manner prescribed.

Should the owner refuse to pay the duty as assessed by the collector or ascertained by the experts, the collector may sell the goods.

The provisions of this section shall not apply in cases where the Commissioner is of opinion that any evasion of this Ordinance has been committed or attempted.

DIVISION III.—DEPOSITS, ABATEMENTS, REMISSIONS AND
REFUNDS OF DUTIES.

Retention of
duty on deposit

158. In prescribed cases the duty payable on any goods may be retained by the Customs on deposit for a period not exceeding six months, and the deposit may be returned to the owner if the goods are exported within the prescribed time.

Refund of duty.

159. Whenever—

(a) goods have received damage or have been pillaged during the voyage;

(b) goods have whilst under Customs control been damaged or destroyed; or

(c) duty has been paid through manifest error of fact or patent misconception of the law—

a refund, rebate, or remission of duty, as the case may require, may be made in the manner prescribed.

Short paid
duty may be
recovered.

160. When any duty has been short levied or erroneously refunded, the person who should have paid the amount short levied or to whom the refund has erroneously been made shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the collector.

No refund if
duty altered.

161. If any practice of the Customs relating to classifying or enumerating any article for duty shall be altered so that less duty is charged upon such article, no person shall thereby become entitled to any refund on account of any duty paid before such alteration took effect.

DIVISION IV.—DISPUTE AS TO DUTY.

Payment of
duty under
protest

162. (1) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty, under the Customs Ordinances, the owner of the goods may pay under protest the sum demanded by the collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in a suit brought in pursuance of this section.

(2) The owner may, within the time limited in this section, bring an action against the collector, in any court of competent jurisdiction, for the recovery of the whole or any part of the sum so paid.

(3) A protest in pursuance of this section shall be made by writing on the entry of the goods the words "Paid under Protest," and adding the signature of the owner of the goods or his agent.

(4) No suit shall lie for the recovery of any sum paid to the Customs as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the suit is commenced within six months after the date of payment.

(5) Nothing in this section shall affect the terms and provisions of section 159.

PART IX.—DRAWBACKS.

163. Drawbacks of import duty may be allowed on exportation in respect of such goods to such amount and in such manner as may be prescribed. Drawbacks allowed.

164. No drawback shall be allowed on any goods of a less value for home consumption than the amount of the drawback or on which the import duty paid did not amount to two pounds. Limit of value.

165. All goods in respect of which any claim for drawback shall be made shall before exportation be produced for examination by the Customs and shall be examined accordingly. Examination of goods under drawback.

166. For the purpose of claiming drawback a drawback claim shall be presented to the collector in the prescribed form. Drawback claims.

167. The person claiming drawback on any goods shall make a declaration upon the claim that the goods have been exported and have not been relanded and are not intended to be relanded, and that such person at the time of shipping was entitled to the drawback, and the name of such person shall be stated in the claim, and the receipt of such person on the claim countersigned by the holder of such claim if the same shall have been transferred in the meantime, shall be a sufficient discharge for such drawback. Declaration on claim.

Restrictions on
payment of
drawback
claim.

168. (1) No drawback claim shall be paid except with the consent of the Commissioner unless presented for payment within six months from the date of the shipment of the goods for export.

(2) The Commissioner may prohibit the payment in whole or in part of any drawback but so as not to deprive the person entitled thereto of any remedy he may have for such drawback.

PART X.—THE COASTING TRADE.

What is
coasting trade.

169. "Coasting trade" means all trade by sea from any place within the limits of the Territory direct to any other place within the said limits, and all vessels when engaged in coasting trade shall be deemed to be coasting vessels to the extent of that trade only.

Coasters not to
take in cargo at
sea or deviate.

170. The master of any coasting ship shall not suffer any goods to be taken into or put out of his ship from or into any other ship at sea except with the sanction of the collector, nor suffer his ship to deviate from her voyage unless forced to do so by unavoidable circumstances or under circumstances explained to the satisfaction of the collector at the first available opportunity.

Penalty : One hundred pounds.

Owner may
report ship.

171. The owner of any ship employed in the coasting trade may with the consent of the collector report such ship inwards or outwards in lieu of the master.

Every such owner so reporting shall be subject to the same provisions and liable to the same penalties under this Ordinance as the master of such ship.

Particulars of
cargo.

172. The master or owner of every coasting ship shall deliver to the collector particulars of all cargo on board the ship.

Penalty : One hundred pounds.

Regulation of
coasting trade.

173. (1) The Governor may, if he thinks fit, from time to time, by order published in the Gazette prohibit, restrict, or regulate the carriage coastwise of any goods or class of goods, and, subject to the terms of any such order, references in this Ordinance to prohibited, restricted, or regulated imports or exports shall, when the context so admits, include goods of which the carriage coastwise is prohibited, restricted, or regulated.

(2) The coasting trade generally as regards the Customs shall be regulated in manner prescribed and books shall be kept, documents produced, and entries made accordingly.

PART XI.—AGENTS.

174. Any owner of goods may comply with the provisions of this Ordinance by an agent lawfully authorised; such agent shall be either a person exclusively in the employment of the owner or shall be a Customs agent duly licensed in the manner prescribed. Authorised agents.

175. Any officer may require from any agent the production of his written authority from the principal for whom he claims to act, and in default of the production of such authority may refuse to recognise the agency. Authority to be produced.

176. Any person who acts as the agent of the owner of any goods for any of the purposes of the Customs Ordinances shall be deemed to be the owner of the goods, and shall accordingly be personally liable for payment of any Customs duties payable in respect of the goods, and shall be liable to perform all acts in respect to the goods which the owner is under the Customs Ordinances liable to perform. But nothing herein contained shall relieve the principal from any liability. Liability of agents.

177. Any person who authorises an agent to act for him in relation to any goods for any of the purposes of the Customs Ordinances shall be liable for the acts and declarations of his agent, and may accordingly be prosecuted for any offence committed by the agent with respect to any such goods in the same manner as if he had himself committed the offence, but shall not be sentenced to imprisonment unless he actually consented to the commission of the offence. And nothing herein shall relieve the agent from liability to prosecution. Liability of principals.

PART XII.—OFFICERS.

DIVISION I.—POWERS OF OFFICERS.

178. The commander or officer in charge of any ship or boat in His Majesty's service or in the service of Customs, such ship or boat having hoisted and carrying the proper ensign or pennant or Customs flag, may chase any ship which does not bring to when lawfully signalled or required to do so and may, after having fired a gun as a signal, fire at or into such ship to compel her to bring to. Ships and boats to bring to.

Officers may
board ships
hovering on
coast.

179. Any officer may require the master of any ship hovering within three nautical miles of the coast to depart, and if such ship shall fail to depart accordingly within twelve hours thereafter any officer may board and bring such ship into port and search her.

The collector may examine all persons on board of such ship and they shall each thereupon answer questions relating to the ship and her cargo, crew, passengers, stores, and voyage, and produce documents relating to the ship and her cargo.

Penalty : One hundred pounds.

Power to
examine all
goods.

180. Any officer may at the risk of the owner open packages and examine, weigh, mark and seal any goods subject to the control of the Customs, and the expenses of the examination including the cost of removal to the place of examination shall be borne by the owner.

Power to
board and
search ships.

181. Any officer may—

- (1) board any ship;
- (2) search any ship;
- (3) secure any goods on any ship.

Boarding.

182. The power of an officer to board shall extend to staying on board any ship, and the collector may station an officer on board any ship, and the master shall provide any suitable sleeping accommodation and suitable and sufficient food for such officer.

Penalty : Fifty pounds.

Searching

183. The power of an officer to search shall extend to every part of any ship, and shall authorise the opening of any package, locker, or place, and the examination of all goods.

Securing goods.

184. The power of an officer to secure any goods shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking, or otherwise securing any goods or the removal of any goods to a King's warehouse.

185. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place upon any ship shall be opened, altered, broken, or erased, except by authority, whilst the goods upon which the fastening, lock, mark, or seal is placed or which are intended to be secured thereby shall remain subject to the control of the Customs.

Seals, etc., not to be broken.

Penalty : Fifty pounds.

186. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship which has arrived in any port from parts beyond the seas and which is bound to any other port within the Territory shall be opened, altered, broken, or erased except by authority; and if any ship enters any port with any such fastening, lock, mark, or seal opened, altered, broken, or erased contrary to this section, the master shall be guilty of an offence against this Ordinance.

Or on vessels in port bound to another port within Territory.

Penalty : One hundred pounds.

187. Any officer and any person acting in his aid when on duty may patrol upon and pass freely along and over any part of the coast or any railway or the shores, banks, or beaches of any port, bay, harbour, lake or river.

Officers may patrol coasts, etc.

188. The officer in charge for the time being of any vessel or boat employed in the service of the Customs may haul any such vessel or boat upon any part of the coast or the shores, banks, or beaches of any port, bay, harbour, lake, or river, and may moor any such vessel or boat thereon and continue such vessel or boat so moored as aforesaid for such time as he shall deem necessary.

Boats on service may be moored in any place.

189. Any person on board any ship or boat or who may have landed from or got out of any ship or boat or in any other manner have entered the Territory may be questioned by any officer as to whether he has any dutiable goods or any prohibited, restricted, or regulated imports or exports upon his person or in his possession or in his baggage.

Power to question passenger.

No. XXV.*Customs Management***1926.**

Detention and
search of
suspected
persons.

190. If any officer of Customs or of police shall have reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs or any prohibited, restricted, or regulated imports or exports secreted about him the following consequences shall ensue :—

- (1) The officer may detain and search the suspected person.
- (2) Before the suspected person shall be searched he may require to be taken before the collector.
- (3) The collector may order the suspected person to be searched or may discharge him without search. But females shall only be searched by a female searcher appointed by the collector.

Penalty for
unjustified
search.

191. No officer shall without reasonable grounds cause any person to be searched.

Penalty : Ten pounds.

Power to stop
vehicles.

192. Any officer of Customs or police upon reasonable suspicion may stop and search any carriage for the purpose of ascertaining whether any dutiable goods or any prohibited, restricted, or regulated imports are unlawfully contained therein and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty : Twenty pounds.

Collector may
confer powers
of police officer
on officer of
Customs.

193. For the purposes of preventing or detecting any offence against the Customs Ordinances a collector may authorise any officer of Customs to exercise all or any of the powers of a police officer, either generally or with reference to any particular case or class of cases.

Power to call
for aid.

194. Any person lawfully making any seizure under any Customs Ordinance may, in the King's name, call upon any person present to assist him, and such assistance shall be rendered accordingly.

Penalty : Twenty pounds.

No. XXV.*Customs Management***1926.**

195. Any officer of His Majesty's forces or any officer of Customs or police may seize any forfeited ship or goods upon land or water or any ship or goods which he has reasonable cause to believe are forfeited.

Power to seize goods.

196. All seized goods shall be taken to the nearest King's warehouse or to such other place of security as the collector shall direct.

Seized goods to be secured.

197. When any ship, boat, or goods have been seized as forfeited, the seizing officer shall give notice in writing of such seizure and the cause thereof to the master or owner or agent of the ship, boat, or goods (unless such master or owner be present at the seizure in which case no notice shall be necessary) either by delivering such notice to him personally or by letter addressed to him and transmitted by post to or delivered at his last-known place of abode or business, and all ships, boats, or goods seized shall be deemed to be condemned and may be sold by the Commissioner unless the person from whom such ship, boat, or goods shall have been seized or the owner shall within one month from the date of seizure give notice in writing to the collector at the nearest port that he claims them; but if any goods so seized shall be of perishable nature or shall be live animals the same may forthwith be sold by the collector.

Notice of seizure to be given.

198. A collector may authorise any ship, boat, or goods seized to be delivered to the claimant on his giving security to pay their value in case of their condemnation.

Seized goods may be returned on security.

199. (1) Whenever any ship, boat, or goods have been seized by any officer and claim to such ship, boat, or goods has been served on the collector by the owner of such ship, boat, or goods, the collector may retain possession of the ship, boat, or goods, and may either—

Procedure after seizure of goods.

- (a) without taking any proceedings for their condemnation, by notice under his hand require the claimant to institute a suit against him for the recovery of the ship, boat, or goods, in which case, if such claimant shall not within two months after the date of such notice enter such suit, the ship, boat, or goods shall be deemed to be condemned without any further proceedings; or

(b) may himself cause a suit to be instituted in any competent court for the forfeiture of the ship, boat, or goods.

(2) If, within two months after receiving the claim, the collector has neither required the claimant to institute a suit as mentioned in (a) nor himself caused a suit to be instituted as mentioned in (b), the ship, boat or goods shall be handed over to the claimant.

Disposal of
forfeited ships
and goods.

200. All forfeited ships, boats and goods shall be disposed of or destroyed in such manner as the Commissioner may direct.

Delivery of
seized goods.

201. All goods seized by any person not being a Customs officer shall forthwith be conveyed to the nearest Custom House and there delivered to an officer.

Arrest of
persons
suspected of
smuggling, etc

202. Any officer of Customs or police may without warrant arrest any person whom he has reasonable ground to believe is guilty of committing, or attempting to commit, or being concerned in the commission of any of the following offences—

(a) smuggling; or

(b) unlawfully conveying or having in his possession any smuggled goods.

Reasons for
arrest.

203. Any officer arresting any person shall as soon as practicable after arrest give him a statement in writing of the reason for his arrest.

Arrested
persons to go
before
magistrate.

204. Every person arrested may be detained until such time as he can without undue delay be taken before a magistrate.

Powers of
magistrate.

205. Any magistrate before whom any person is brought under this Ordinance may—

(1) commit such person to gaol until he can be brought before a court of competent jurisdiction to be dealt with according to law; or

(2) admit him to bail upon his giving sufficient security for his appearance before a court of competent jurisdiction at the time and place appointed for the hearing of the charge.

206. Whenever information in writing has been given on oath to the collector that goods have been smuggled, undervalued, unlawfully entered, or illegally dealt with, or that it is intended to smuggle, undervalue, unlawfully enter, or deal illegally with any goods, or whenever any goods have been seized or detained, the owner shall immediately upon being requested so to do by the collector produce and hand over to him all books and documents relating to any such goods or to any other goods imported or exported by him at any time within the period of five years immediately preceding such request, and shall also produce for the inspection of the collector and permit him or any officer authorised by him to make copies of or extracts from all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to such goods.

Production of documents, etc., in cases of seizure.

Penalty : One hundred pounds.

207. The collector may impound or retain any document presented in connection with any entry or required to be produced under this Ordinance, but the person otherwise entitled to such document shall in lieu thereof be entitled to a copy certified as correct by the collector and such certified copy shall be received in all courts as evidence and of equal validity with the original.

Collector may impound documents.

208. The collector may require from the owner of any goods proof by declaration or the production of documents that the goods are owned as claimed and are properly described, valued, or rated for duty, and the collector may refuse to deliver the goods or to pass any entry relating thereto pending such proof.

Collector may require further proof of proper entry.

209. If any document in a foreign language be presented to any officer for any purpose connected with Customs business, the collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the collector may approve or to be verified as he may require.

Translation of foreign documents

210. Samples of any goods under the control of the Customs may for any purpose deemed necessary by the collector be taken, utilised, and disposed of by any officer in manner prescribed.

Customs samples

General power
of collector.

211. In all cases not herein otherwise provided for the collector may exercise any power exercisable by the Customs.

DIVISION II.—PROTECTION TO OFFICERS.

Reasonable
cause for
seizure a bar to
action.

212. No officer shall be liable for any seizure under this Ordinance for which there shall have been reasonable cause, and when any claimant recovers any ship, boat, or goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found, such finding shall bar all proceedings against all officers concerned in the seizing.

DIVISION III.—OBLIGATIONS OF OFFICERS.

Liability to
transfer.

213. Any officer of Customs shall be liable to be transferred from one place to any other place within the Territory or the Uganda Protectorate and shall act for such ports or districts as shall be assigned to him for that purpose by the Commissioner and shall perform such duties as may be required of him by the senior Customs officer at any particular port or place at which any such officer of Customs may be stationed.

Officers taking
fee or reward
not authorised,
to be dismissed.

214. If any officer, clerk, or other person acting in any office or employment in or belonging to the Customs shall take or receive any fee, perquisite or reward, whether pecuniary or otherwise, directly or indirectly, from any person (not being a person duly appointed to some office in the Customs) on account of anything done or omitted to be done by him in, or in any way relating to, his said office or employment, except such as he shall receive under any law, or by permission of the Governor, such officer, clerk or other person so offending shall, on proof thereof to the satisfaction of the Governor, be dismissed from his office.

Declaration on
admission to
office.

215. Every person who shall be appointed to any office or employment in the Customs shall, on his admission thereto, in addition to any oath which may be required by law to be taken by him, make the following declaration before a Magistrate :—

“ I, A. B., do declare that I will be true and faithful in the execution to the best of my knowledge and power of the trust committed to my charge and inspection in the service of the Customs of the Colony and Protectorate of Kenya and Uganda Protectorate, and that I will not require, take, or

receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatever, other than my salary, and what is or shall be allowed me by law or by any special order of the Governor."

PART XIII.—FORFEITURES AND PENALTIES.

DIVISION I.—FORFEITURES.

216. The following ships or boats not exceeding two hundred and fifty tons registered tonnage shall be forfeited to His Majesty :—

Forfeiture
of ships.

- (1) Any ship or boat used in smuggling or knowingly used in the unlawful conveyance of any smuggled or forfeited goods.
- (2) Any ship or boat found within three nautical miles of the coast failing to bring to for boarding upon being lawfully required to do so.
- (3) Any ship or boat hovering within three nautical miles of the coast and not departing within twelve hours after being required to depart by an officer.
- (4) Any ship or boat from which any goods are thrown overboard, staved or destroyed to prevent seizure by the Customs.
- (5) Any ship or boat found within any port with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master of which is unable to account lawfully for the difference.
- (6) Any ship or boat within three nautical miles of the coast having false bulkheads, false bows, sides, or bottoms, or any secret or disguised place adapted for the purpose of concealing goods or having any hole, pipe, or other device adapted for the purpose of running goods.

The owner of any ship exceeding two hundred and fifty tons registered tonnage which would be forfeited if the ship were two hundred and fifty tons registered tonnage or less, shall be liable to a penalty not exceeding one thousand pounds, and the ship may be detained until the penalty is paid or until security is given for its payment.

Forfeiture
of goods.

217. The following goods shall be forfeited to His Majesty :—

- (a) All smuggled goods.
- (b) All goods imported in contravention of any prohibition, restriction or regulation excepting only goods the importation of which is prohibited, restricted, or regulated by notice and which shall have been shipped to be imported without knowledge of the notice by the shipper and before the expiration of a reasonable time for the acquisition of knowledge thereof at the port of shipment and so that such excepted goods shall, at the discretion of the Commissioner, either be re-exported or be disposed of in such manner as the Commissioner may approve.
- (c) All goods imported in any ship or boat in which goods are prohibited to be imported.
- (d) All dutiable goods found on any ship or boat being unlawfully in any place.
- (e) All goods found on any ship after arrival in any port and not being specified or referred to in the inward manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.
- (f) All goods in respect of which bulk is unlawfully broken.
- (g) All goods which being subject to the control of the Customs shall be moved, altered or interfered with except by authority and in accordance with this Ordinance.
- (h) All goods which by this Ordinance are required to be removed or dealt with in any way and which shall not be removed or dealt with accordingly.

- (i) All goods in respect of which any entry, invoice, declaration, answer, statement, or representation which is false or wilfully misleading in any particular has been delivered, made or produced.
- (j) Any carriage or animal used in smuggling or in the unlawful conveyance of smuggled or forfeited goods.
- (k) The cargo of any ship or boat which hovers about the coast and does not depart within twelve hours of being required by an officer to depart.
- (l) All goods not being passengers' luggage found on any ship after clearance and not specified or referred to in the outward manifest and not accounted for to the satisfaction of the collector.
- (m) All prohibited exports put on any ship or boat for export or brought to any wharf or place for the purpose of export, and all restricted or regulated exports, which, in contravention of any restriction or regulation, are put on any ship or boat for export or brought to any wharf or place for the purpose of export.
- (n) All dutiable goods concealed in any manner.
- (o) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.
- (p) All dutiable goods found in the possession or in the baggage of any person who has got out of or landed from any ship or boat or in any other manner entered the Territory and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.
- (q) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.
- (r) All warehoused, drawback or transshipment goods shipped for exportation or entered to be so shipped on any vessel of less than ten tons registered tonnage.

Appraisement
of property
seized.

218. When any suit is instituted for the forfeiture of any ship, boat, or goods seized under the Customs Ordinance, there shall at the same time be filed an appraisement of the ship, boat, or goods seized, made by an officer or other person authorised by the Governor. The appraisement shall be sworn to and shall be final as to the value of the ship, boat or goods for the purposes of jurisdiction.

Forfeited
packages and
goods.

219. The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained, and the forfeiture of any package under section 217 shall extend to all goods packed or contained in the package.

DIVISION II.—PENALTIES.

Assembly for
smuggling.

220. All persons to the number of two or more assembled for the purpose of smuggling, or for preventing the seizure of, or for rescuing after seizure any smuggled goods, shall be guilty of an offence and shall be liable to imprisonment of either description for any term not exceeding five years.

Collusive
seizure.

221. Whoever—

(a) being an officer of the Customs or Police makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any ship, boat, carriage, or goods liable to forfeiture, or conspires or connives with any person to import or export, or is in any way concerned in the smuggling of any goods for the purpose of seizing any ship, boat, carriage, or goods and obtaining any reward for such seizure;

Bribe offered
to officer.

(b) gives, or procures to be given, or offers or promises to give or procure to be given any bribe, recompense or reward to, or makes any collusive agreement with, any officer to induce him in any way to neglect his duty, or who by threats, demands, or promises attempts to influence any officer in the discharge of his duty; or

Rescuing goods

(c) rescues any goods which have been seized or, before or after seizure, staves, breaks, or destroys any goods or documents relating thereto to prevent the seizure thereof or the securing the same or the proof of any offence,

shall be guilty of an offence, and shall be liable to imprisonment of either description for a term of not exceeding five years.

222. Whoever—Shooting at
Customs ship,
etc.

- (a) shoots at any ship or boat in the services of the Customs;
- (b) shoots at any officer in the execution of his duty; or
- (c) wounds or maims any officer in the execution of his duty,

shall be guilty of an offence, and shall be liable to imprisonment of either description for life.

223. Whoever—Removal or
destruction of
dutiable goods.

- (a) removes any dutiable goods from a warehouse without paying the duty;
- (b) wilfully destroys any goods duly warehoused; or
- (c) by force or violence assaults, resists, or obstructs any officer of Customs or other person duly employed for the prevention of smuggling in the execution of his duty,

shall be guilty of an offence and shall be liable to a fine not exceeding one hundred pounds, or to imprisonment of either description for two years. On the conviction of an officer of an offence under (b), no duty on the said goods shall be paid and the Governor may order compensation to be paid out of the general revenue of the Territory.

224. No person shall—

Smuggling

- (a) smuggle any goods;
- (b) without lawful excuse (proof whereof shall lie upon him) have in his possession, on board any ship, any such goods or prohibited imports; or
- (c) have in his possession, power, or control any goods of which the export is for the time being prohibited, restricted, or regulated with intent to smuggle, or knowing that they are intended to be smuggled.

Penalty : One hundred pounds.

225. The master or owner of a ship or boat shall not use his ship or boat, or knowingly suffer her to be used, in smuggling.

Master not to
use or allow use
of ships for
smuggling, etc.

Penalty : One hundred pounds.

Special
provision in
relation to
prohibited
imports.

226. (1) Any person who, in regard to any prohibited, regulated, or restricted import to which this section applies—

- (a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession, on board any ship, any such import;
- (b) smuggles, or attempts to smuggle, into the Territory any such import;
- (c) without lawful excuse (proof whereof shall lie upon him) has in his possession any such import which has been smuggled into the Territory;
- (d) aids, abets, counsels, or procures, or is in any way knowingly concerned in the smuggling into the Territory of any such import; or
- (e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the smuggling or intended smuggling into the Territory of any such import,

shall be guilty of an offence against this Ordinance.

Penalty : Imprisonment of either description for two years.

(2) This section shall apply to all prohibited, restricted, or regulated imports to which the Governor by order declares that it shall apply.

(3) This section shall not prevent any person from being proceeded against for any offence against any other section of this Ordinance, but he shall not be liable to be punished twice in respect of any one offence.

Customs
offences.

227. No person shall—

- (a) evade payment of any duty which is payable;
- (b) obtain any drawback which is not payable;
- (c) prepare, pass or present any document purporting to be a genuine invoice which is not in fact a genuine invoice;
- (d) bring into the Territory or have in his possession without lawful excuse (the proof of which shall lie upon him) any bill heading or other paper appearing to be a heading or blank capable of being filled up and used as an invoice for goods from foreign parts;

- (e) make any entry which is false or incorrect in any particular;
- (f) make in any declaration or document produced to any officer any statement which is untrue or incorrect in any particular or produce or deliver to any officer any declaration or document containing any such statement;
- (g) mislead any officer in any particular likely to affect the discharge of his duty;
- (h) move, alter or interfere with, except by authority, any goods subject to the control of the Customs;
- (i) refuse or fail to answer questions or to produce documents;
- (j) sell or offer for sale any goods upon the pretence that such goods are prohibited imports or smuggled goods; or
- (k) sell or expose for sale or have in his possession for sale or any purpose of trade on board any ship in a port any goods not shown as required by section 59 on the ship's report.

Penalty : One hundred pounds :

Provided that the Commissioner may issue licences subject to such conditions as he may think necessary for securing payment of any export or import duties payable—

- (a) to persons from the shore to trade on board ships;
- (b) for such articles as are carried on board ship for sale to passengers to be sold to persons visiting the ship in harbour; and
- (c) for the sale from the ship of ice, fresh provisions and similar goods.

228. (1) Any person who contravenes any of the provisions of this Ordinance shall be guilty of an offence, and, subject to the provisions of this Ordinance, shall be liable on conviction to a penalty or imprisonment not exceeding the amount of the pecuniary penalty or the term of imprisonment set forth and provided in respect of the particular provision of the Ordinance which has been so contravened, or to both such fine and imprisonment, or, if no pecuniary penalty or imprisonment is provided, to a fine not exceeding ten pounds.

(2) Provided always that the Attorney-General or the Commissioner may at his discretion, in lieu of prosecuting an offence under this section, sue for and recover by civil suit or other appropriate proceedings any penalty which may have been incurred (but so that the court shall have power to reduce the penalty), and no person against whom any such suit or other appropriate proceedings shall have been had shall be liable to prosecution for any offence under this section in respect of the same subject-matter.

Joint and
several liability
to penalties.

229. When a penalty is jointly and severally incurred by any number of persons, such persons shall each and every one be liable to pay the whole penalty.

Aiders and
abettors.

230. Whoever aids, abets, counsels, or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Ordinance shall be deemed to have committed such offence and shall be punishable accordingly.

Attempts.

231. Any attempt to commit an offence against this Ordinance shall be punishable as if the offence had been committed.

Penalties in
addition to
forfeiture.

232. All penalties shall be in addition to any forfeiture.

Maximum
penalty in
certain cases.

233. If any penalty hereby provided shall be less than three times the value of any goods in respect of which the offence has been committed, the maximum penalty shall be thrice the value of such goods.

Value for
purpose of
penalty.

234. In any Customs prosecution or proceedings where the penalty is based on the value of the goods, such value shall be taken to be the value of goods of the like kind but of the best quality upon which the duties of importation shall have been paid as sold at or about the time of the offence at Mombasa, even though such penalty may have been incurred at any other place in the Territory.

Maximum
penalty in case
of intent to
defraud.

235. Any person may at the same time be charged with an offence against this Ordinance and with intent to defraud the revenue, and if in addition to such offence he is convicted of such intent, the maximum pecuniary penalty shall be double that otherwise provided.

236. When any person is convicted of an offence against this Ordinance punishable by a pecuniary penalty, but not by imprisonment for a term of two years or more, and it shall appear that such person had at any time within the previous five years been previously convicted of any offence against this Ordinance, the court may, in lieu of or in addition to imposing any pecuniary penalty, sentence such person to imprisonment of either description for any period not exceeding two years and with or without the right of release on payment of a penalty.

If previous conviction defendant may be imprisoned.

PART XIV.—CUSTOMS PROSECUTIONS.

237. Prosecutions for offences against this Ordinance, and proceedings for the recovery of Customs duties or penalties, or for the condemnation, or forfeiture of ships, boats, or goods are herein referred to as "Customs prosecutions."

Meaning of Customs prosecutions.

238. Customs prosecutions may be instituted in the name of the Attorney-General or the Commissioner by suit, information, or other appropriate proceeding in any court having jurisdiction therein.

How instituted.

239. Subject to the provisions of this Ordinance, the Petitions of Right Ordinance, shall apply to all civil proceedings under this Ordinance by or against the Attorney-General or the Commissioner in like manner as it applies to suits by or against the Government, except that the consent of the Governor shall not be required to any proceeding which is by this Ordinance expressly permitted to be taken against the Attorney-General or the Commissioner.

Application of Petitions of Right Ordinance, Cap. 17.

240. Customs prosecutions shall be instituted within five years next after the date of the offence committed.

Limitation of Customs prosecutions.

241. No witness on behalf of the Attorney-General or the Commissioner in any Customs prosecution shall be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Protection to witnesses.

Averment of
cause
sufficient.

242. In every Customs prosecution the averment of the prosecutor or plaintiff, and in every proceeding under this Ordinance against the Attorney-General or the Commissioner the averment of the defendant, shall be deemed to be proved in the absence of proof to the contrary, but so that—

(a) when an attempt to defraud the revenue is charged the averment shall not be deemed sufficient to prove the intent; and

(b) no person shall be sentenced to imprisonment unless his guilt is established by evidence.

Proof of
order, etc.

243. The production of the Gazette containing any order, Gazette notice, or regulation appearing to have been issued or made under this Ordinance, or the production of any document purporting to be certified by the collector to be a true copy of or extract from any such order, Gazette notice, or regulation issued or made under this Ordinance, shall be *primâ facie* evidence of the issue or making of such order, Gazette notice, or regulation and that the same is in force.

Burden of proof
on defendant.

244. If in any Customs prosecution or in any proceedings under section 199 for the recovery of any ship, boat, or goods seized by a Customs officer any question shall arise whether or not the duties of Customs have been paid in respect of any goods or whether or not any goods have been lawfully imported, exported, carried coastwise, unshipped, or shipped, the burden of proof that such duties have been paid or that such goods have been lawfully imported, exported, carried coastwise, unshipped, or shipped, as the case may be, shall lie on the defendant in a Customs prosecution and on the plaintiff in the aforesaid proceedings under section 199.

Proof of office.

245. In any Customs prosecution the fact that any person is an officer may be proved by *viva voce* evidence.

Conviction to
operate as a
condemnation

246. Where the committal of any offence causes a forfeiture of any ship, boat, or goods, the conviction of any person for such offence or the judgment or decree of a civil court for recovery of any part of a penalty attached to the commission of such offence shall have effect as a condemnation of the ship, boat, or goods in respect of which the offence is committed.

PART XV.—SETTLEMENT OF CASES BY THE
COMMISSIONER.

247. If any dispute shall arise between any officer and any person with reference to any contravention of this Ordinance, the Commissioner may with the consent of such person in manner prescribed inquire into and determine the dispute and shall have power by order to impose, enforce, mitigate or remit any penalty or forfeiture which he shall determine has been incurred.

Settlement of
dispute by
Commissioner.

248. Every such order shall be final and without appeal and shall not be liable to be quashed on any account, and a copy thereof shall be delivered to such person and may be enforced in the same manner as a decree or order of the Supreme Court.

Commissioner's
order to be
final.

249. Notwithstanding anything contained in sections 247 and 248 and in any case under this Ordinance in which a penalty is provided or in which anything is liable to confiscation or forfeiture, such penalty may be imposed or such confiscation or forfeiture may be ordered by the Commissioner without the consent of the person liable, but only to the extent of ten pounds in value or amount.

Power of
Commissioner to
impose penalties
of limited
amount.

250. (1) The Commissioner or other duly appointed person in holding any inquiry under this part of this Ordinance may hold such inquiry in public, and may—

Powers of
Commissioner
at inquiries.

- (a) summons the parties and any witness before him;
 - (b) take evidence on oath;
 - (c) require the production of documents;
 - (d) allow reasonable expenses to witnesses and costs to successful parties.
- (2) No person being summoned as a witness at any inquiry under this Ordinance shall—
- (a) disobey such summons;
 - (b) refuse to be sworn as such witness;
 - (c) refuse or fail to produce any documents he may be required to produce;

- (d) being sworn as witness, refuse or fail to answer any questions lawfully put to him.

Penalty : Twenty pounds.

Receiving of
costs.

251. Costs may be awarded for reasonable expenses incurred by either party and shall be recoverable as debt in the same manner as costs awarded by a court.

PART XVI.—REGULATIONS.

Power to make
Regulations.

252. (1) The Governor in Council may make Regulations not inconsistent with this Ordinance prescribing all matters which by this Ordinance are required or permitted to be prescribed or for giving effect to this Ordinance or for the conduct of any business relating to the Customs and in particular for prescribing—

- (a) the conditions under which goods may pass through the Territory in transit;
- (b) the fee to be paid for any licence issued under this Ordinance and generally;
- (c) the charge to be made for rent on goods on premises administered by the Customs;
- (d) the conditions under which the removal from or into the Territory may take place of goods which are subject to any agreement made under this Ordinance with the Government of any other territory;
- (e) a penalty not exceeding fifty pounds for the breach of such regulations.

(2) All such Regulations shall be published in the Gazette.

PART XVII.—MISCELLANEOUS.

Commissioned
ships to be
reported.

253. The person in command of any ship holding commission from His Majesty or from any foreign state having on board any goods other than ship's stores laden in parts beyond the seas shall, when called upon by the Commissioner or an officer specially authorised by the Commissioner so to do—

- (a) deliver an account in writing of the quantity of such goods, marks, and numbers thereof, and the names of the shippers and consignees, and declare to the truth thereof;
- (b) answer questions relating to such goods.

254. Ships under commission from His Majesty or any foreign state having on board any goods other than ship's stores laden in parts beyond the seas may be boarded and searched by an officer especially authorised as mentioned in the last preceding section in the same manner as other ships, and the officer may bring any such goods ashore and place them in a King's warehouse.

Power to search
commissioned
ships.

255. The Governor may award to any officer or other person detaining any person liable to detention under any law relating to Customs, if such person shall be convicted, such reward as he may think fit, not exceeding the sum of ten pounds for each person so detained.

Rewards for
detaining
persons.

256. The Governor may order such reward as he may see fit to be paid out of any pecuniary penalty or composition to any officer or other person by whose means the same is recovered.

Rewards out of
penalties.

257. The Governor may order to be paid in respect of any seizure made under any law relating to the Customs to the person or persons making the same such rewards as he may see fit, not exceeding the value of goods or things so seized : Provided that the Governor, on the recommendation of the Commissioner, may make special rewards exceeding the value of the goods seized in the case of the seizure of any prohibited, restricted, or regulated imports to the person or persons making the same, but no such reward shall exceed the sum of one hundred pounds.

Rewards to
officers making
seizure.

258. The Governor may, on the condemnation of any ships, boats, or goods, or on the apprehension of any parties, or on the recovery of any penalties under any law relating to the Customs, direct the seizer's share of such ships, boats, or goods, or of any penalties or reward that may be recovered on account of any such seizure to be distributed so that any other person, through whose information or means such seizure shall have been made, or penalty recovered, or party apprehended, and whom he may deem to be so entitled, may participate in such proportions as the Governor shall deem expedient.

Power of
Governor to
distribute
seizer's share of
seizure so as to
reward persons
not actually
present.

259. The Commissioner may prescribe the form of all bonds, documents, and papers necessary for the carrying out of this Ordinance, and make any addition or alteration to existing or prescribed forms.

Commissioner
may prescribe
forms.

Requirements
as to forms.

260. (1) Where a prescribed form contains by way of note or otherwise a clear direction or indication of any requirement of the Customs as to—

- (a) the colour or size of the form;
- (b) the number of copies of the document to be tendered (the words "in duplicate" or similar words shall be sufficient indication of the number required);
- (c) the nature or form of the information to be furnished to the Customs;
- (d) any action to be taken by the person concerned or his agent in the transaction in which the document is used;
- (e) receipts to be signed by ship's officers, railway officers or other persons in proof that the goods described in the form have been received for carriage or otherwise;

the requirements so indicated shall be deemed to be prescribed.

(2) The Commissioner may require copies of any prescribed form in addition to the number indicated on the form.

(3) In cases where the forms prescribed differ from existing forms, the Commissioner may permit the continuance of the use of the latter until such time as he may think fit.

Collector's sale

261. At sales by the collector—

- (a) the goods shall be sold by auction or by tender and after such public notice as may be prescribed and where not prescribed after reasonable public notice;
- (b) the goods may be sold either free of or subject to duty and charges;
- (c) no bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the collector;
- (d) the purchase money shall be paid in cash on the acceptance of the bid or tender; if not so paid the lot may be again offered, but the person whose bid was accepted shall be liable to pay to the collector any loss sustained by reason of his failure to comply with this condition;

- (e) should there be any discrepancy between the quantity stated in the sale list and the actual quantity available, the collector shall not be bound to deliver more than the quantity available for delivery;
- (f) the goods shall be removed from the warehouse within three days after the sale, and if not so removed, shall be charged warehouse fees from the date of sale up to the date of delivery;
- (g) all goods remaining in the warehouse after the sale shall be at the purchaser's risk and expense.

262. The proceeds of any goods sold by the collector shall be applied as follows :— Proceeds of sales.

Firstly, in the payment of expenses of the sale.

Secondly, in payment of the duty.

Thirdly, in the payment of the warehouse rent and charges.

Fourthly, in the payment of the freight, if any, due upon the goods if written notice of such freight shall have been given to the collector.

And the balance, if any, shall be paid into general revenue, but may be refunded to the person entitled thereto if claimed within six months from the date of sale.

263. The Governor in Council may enter into an agreement with the Government of any territory in Eastern Africa, being a portion of the British Dominions or under the protection of the Crown, or which is administered by a mandate held by His Majesty, providing :— Agreements with Governments of other East African territories.

- (1) That goods grown, produced or manufactured in the Colony and Protectorate of Kenya shall be admitted into that territory free of Customs duty, and that goods grown, produced or manufactured in that territory shall be admitted into the Colony and Protectorate of Kenya free of Customs duty.
- (2) That one party to the agreement shall collect on behalf of the other party the Customs duties imposed in respect of goods which having been imported into its territory are removed into the territory of the other party.

Repeal and
savings.

264. (1) The Customs Ordinance (Chapter 87 of the Revised Laws) is hereby repealed.

(2) All proclamations, rules, regulations and notices duly made or issued under the Ordinances hereby repealed shall, so far as applicable for the purposes of this Ordinance, be of the same validity and effect as if they had been made or issued under this Ordinance. All such proclamations, rules, regulations and notices shall remain in force until revoked, altered, or varied by regulations duly made under the provisions of this Ordinance.

SCHEDULE.

SECURITY TO THE CUSTOMS.

(Section 43.)

Form of
security.

By this security the subscribers are, pursuant to the Customs Management Ordinance, 1926, bound to the Commissioner of Customs of the Colony and Protectorate of Kenya and the Uganda Protectorate in the sum of.....(*here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition*), subject only to this condition that if..... (*here insert the condition of the security*), then this security shall be thereby discharged.

Dated the.....day of.....19...

Names and Descriptions of Subscribers.	Signatures of Subscribers	Signatures of Witnesses.

NOTE.—If liability is not intended to be joint and several and for the full amount here state what is intended as, for example, this: "The liability of the subscriber is joint only," or "The liability of (*mentioning subscriber*) is limited to....." (*here state amount of limit of liability or mode of ascertaining limit*).

No. 26 of 1926

**An Ordinance to Provide for the Imposition and
Collection of Consumption Taxes on Wines
and Spirits.**

[5TH NOVEMBER, 1926.] Date of Assent.

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 Wines and Spirits Consumption Tax Ordinance, 1926.” Short title.

2. In this Ordinance, the expression—

Interpretation.

“ Spirits ” means potable spirits and includes brandy, whisky, rum, gin, geneva, liqueurs, cordials and mixed spirits containing over three per centum of proof spirit ;

“ Proof spirit ” means spirits which at a temperature of 51 degrees of Fahrenheit’s thermometer weigh 12/13 of an equal volume of distilled water.

3. There shall be charged, levied and paid to the general revenue of the Colony on all wines and spirits released from Customs control for consumption in the Colony a tax at the appropriate rate set forth in the Schedule to this Ordinance. Tax to be paid on wines and spirits.

4. The Governor in Council may make rules—

Power to make rules.

- (a) for securing the payment of the tax imposed by this Ordinance ;
- (b) for enabling refunds to be made in case of exportation of wines and spirits on which the tax has been paid ; and
- (c) generally, for carrying into effect the provisions of this Ordinance.

No. XXVI.*Wines and Spirits***1926.****Penalties.**

5. Any person acting or attempting to act in contravention of this Ordinance or of any rules made thereunder shall be liable to a penalty not exceeding fifty pounds or in default of payment to simple imprisonment for a period not exceeding three months; and, if the payment of tax has been avoided by such contravention of the Ordinance or rules, such person shall be liable to an additional penalty not exceeding three times the amount of the tax so avoided and in default of payment to simple imprisonment for a period not exceeding three months.

**Date of
commencement.**

6. This Ordinance shall commence and come into operation on the 6th day of November, 1926.

SCHEDULE.

	Sh. Cts.
Wines (other than Champagne and Sacramental	
Wines), per Imperial gallon 	3 00
Champagne, per Imperial gallon 	15 00
Spirits, per Imperial gallon 	7 50

No. 27 OF 1926.

An Ordinance Relating to the Custody of Children.

[30TH NOVEMBER, 1926.] Date of Assent

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 Custody of Children Ordinance, 1926.” Short title.

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

“ Child ” means a person under, or appearing to be under, the age of sixteen years;

“ Parent ” includes any person entitled to the custody of a child;

“ Person ” includes any school or institution.

3. Where the parent of a child applies to the Supreme Court for a writ or order for the production of the child, and the court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the child, the court may in its discretion decline to issue the writ or make the order. Power to Court as to production of child.

4. If at the time of the application for a writ or order for the production of the child the child is being brought up by another person, the Supreme Court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable, having regard to all the circumstances of the case. Power to Court to order repayment of costs of bringing up child.

Court in
making order
to have regard
to conduct of
parent.

5. Where a parent has—

- (a) abandoned or deserted his child; or
- (b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties;

the court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.

Power to Court
as to child's
religious
education.

6. Upon any application by the parent for the production or custody of a child, if the court is of opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up. Nothing in this Ordinance contained shall interfere with or affect the power of the court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.

Disposal of
child by order
of Court.

7. (1) Where the parent of a child has been—

- (a) convicted of committing, abetting or attempting to commit in respect of such child an offence mentioned in the Schedule to this Ordinance; or
- (b) committed for trial for any such offence;

the Supreme Court or any subordinate court of the first class before whom the case may be brought may, either at the time when the parent is so convicted or committed for trial, and without requiring any new proceedings to be instituted for the purpose, or at any other time, if satisfied on inquiry that it is expedient so to deal with the child, order that the child be taken out of the custody, charge or care of the parent so

No. XXVII. *Custody of Children***1926.**

convicted or committed for trial, and be committed to the care of any person named by the court (such person being willing to undertake such care), until the child attains the age of eighteen years, or for any shorter period, and the court making the order or any court of like jurisdiction may of its own motion, or on the application of any person, from time to time, by order renew, vary and revoke any such order.

(2) Where an order is made under this section in respect of a parent who has been committed for trial, then, if such parent is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void, except with regard to anything that may have been lawfully done under it.

Order void on
acquittal.

8. (1) Where it is shown to the satisfaction of the Supreme Court or a subordinate court of the first class, on the application of any person—

Powers of court
in regard to
children in
certain cases.

- (a) that a female child is, with the knowledge of her parent, exposed to the risk of seduction or prostitution, or of being unlawfully carnally known, or living a life of prostitution; or
- (b) that any child is being persistently ill-treated or neglected by his parent; or
- (c) that any child is persistently frequenting the company of any reputed thief or of any common or reputed prostitute;

the court may adjudge the parent of such child to execute a bond, with or without sureties, to exercise due care and supervision in respect of such child, or may order that the child be taken out of the custody, charge or care of such parent and be committed to the care of any person named by the court (such person being willing to undertake such care), until the child attains the age of eighteen years, or for any shorter period, and the court making the order or any court of like jurisdiction 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.

Cap. 7.

(2) The provisions of the Criminal Procedure Ordinance with respect to bonds to be of good behaviour (including the provisions as to the enforcement thereof) shall apply to bonds under this section.

Order, how made.

9. Every order under section 7 or section 8 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 to undertake the care of a child in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

Power to extend period of custody in case of female child

10. The Supreme Court or a subordinate court of the first class may at any time on the application of the person to whose care any female child is committed under section 7 or section 8, and with the consent of such child, extend the period for which the child was so committed until she attains the age of twenty-one years.

Discharge.

11. The Governor may at any time in his discretion discharge a child from the care of any person to whose care such child is committed in pursuance of section 7 or section 8, either absolutely or on such conditions as the Governor may approve.

Emigration.

12. The Governor, in any case where it appears to him to be for the benefit of a child who has been committed to the care of any person in pursuance of section 7 or section 8, may empower such person to procure the emigration of the child, but, except with such authority, no person to whose care a child is so committed shall procure or allow his emigration.

Control of child committed to any person under order of court.

13. Any person to whose care a child is committed under section 7 or section 8 shall, whilst the order is in force, have the like control over the child as if he were the parent of such child; and if any person—

- (a) knowingly assists or induces, directly or indirectly, a child to escape from the person to whose care such child is so committed; or

(b) knowingly harbours, conceals, or prevents from returning to such person, a child who has so escaped, or knowingly assists in so doing;

he shall be liable to a fine which may extend to twenty pounds, or to imprisonment of either description for a term which may extend to three months, or to both such fine and imprisonment.

14. The Governor in Council may make rules in relation to children committed to the care of any person and to the duties of such persons with respect to such children. Power to make rules

SCHEDULE.

Any of the following offences punishable under the Indian Penal Code :—

- Abandonment;
- Abduction;
- Assault;
- Buying or selling for purposes of prostitution;
- Carnal intercourse;
- Criminal force;
- Culpable homicide;
- Exposure;
- Enticing;
- Grievous hurt;
- Hurt;
- Kidnapping;
- Rape;
- Seduction;
- Unnatural offence.

Any offence punishable under the Criminal Law Cap. 78 Amendment Ordinance.

No. 28 OF 1926.

**An Ordinance to Authorise the Aggregation of
Service in the Police and Prisons Services for
the Purpose of the Award of Gratuities.**

Date of Assent.

[30TH NOVEMBER, 1926.]

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 Police and Prisons Officers (Gratuities) Ordinance, 1926.”

Aggregation for
purpose of
gratuities of
service in the
Police and
Prisons.

2. For the purpose of the award of gratuities under any enactment for the time being in force under which gratuities may be awarded to Police and Prisons Officers, a Police or Prisons Officer who has served partly in the Police and partly in the Prisons service, whether such service has been performed wholly in the Colony or partly in the Colony and partly in any territory service in which counts as service in the Colony, shall be allowed to count such combined service as if it had been performed wholly in the Police service or wholly in the Prisons service.

No. 29 OF 1926.

An Ordinance Relating to Statutory Declarations.

[30TH NOVEMBER, 1926.] Date of Assent.

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 Statutory Declarations Ordinance, 1926." Short title.
2. It shall be lawful for any Magistrate, Justice of the Peace, or Commissioner for Oaths to take the declaration of any person voluntarily making and subscribing the same before him in the Form in the Schedule to this Ordinance. Power to take declarations
3. Whenever any declaration shall be made and subscribed by any person under and in pursuance of the provisions of this Ordinance, such fees or fee as would have been due and payable on the taking or making any legal oath, solemn affirmation, or affidavit shall be in like manner due and payable upon making and subscribing such declaration. Fees payable on declarations
4. A declaration made under this Ordinance may be referred to in any Ordinance or other legal document as a Statutory Declaration. Mode of describing declaration.
5. If any person knowingly and wilfully makes any statement which is false in a material particular in a Statutory Declaration he shall be liable on conviction to imprisonment of either description for a term not exceeding two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine. Penalty.

SCHEDULE.

Section 2.)

I, A.B., do solemnly and sincerely declare as follows :—

[Here state the matters declared.]

I make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Ordinance, 1926.

An Ordinance to Amend the Interpretation and General Clauses Ordinance.

Date of Assent.

[30TH NOVEMBER, 1926.]

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 Interpretation and General Clauses (Amendment) Ordinance, 1926,” 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.”

Amendment of
section 2 of the
Principal
Ordinance.

2. (1) The following shall be inserted as paragraph (24a) of section 2 of the Principal Ordinance :—

“ (24a) ‘ Native Reserve ’ shall include any area declared to be a Native Reserve under the provisions of the Crown Lands Ordinance.”

Cap. 140.

(2) Paragraph (36) of section 2 of the Principal Ordinance is hereby repealed, and in lieu thereof shall be read the following :—

“ (36) ‘ Statutory declaration ’ shall mean a declaration made by virtue of the Statutory Declarations Ordinance, 1926.”

Effect of repeal
of Ordinance
on rules, etc.,
made under it.

3. Where any Ordinance or part of an Ordinance is repealed, all proclamations, rules, by-laws, orders and notices issued under or made in virtue thereof shall remain in force so far as they are not inconsistent with the repealing Ordinance and, unless the contrary intention appears, until they shall have been revoked or have been repealed by proclamations, rules, by-laws, orders or notices, as the case may be, issued or made under the provisions of the said repealing Ordinance.

No. 31 OF 1926

An Ordinance to Amend the Criminal Procedure Ordinance.

[31ST DECEMBER, 1926.] Date of Assent.

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

1. This Ordinance may be cited as "the Criminal Procedure (Amendment) Ordinance, 1926," and shall be read as one with the Criminal Procedure Ordinance (Chapter 7 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

2. Section 167 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

" 167. (1) Whenever a magistrate issues a summons he may if he see reason so to do and shall when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused provided that he pleads guilty in writing or appears by an advocate.

Short title
Power to dispense with personal attendance of accused.

(2) But the magistrate inquiring into or trying the case may, in his discretion, at any subsequent stage of the proceedings, unless the accused has pleaded guilty, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(3) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required, the costs of any adjournment for such purpose shall be borne in any event by the accused."

No. XXXII.

Appropriation

1926.

No. 18 OF 1926.

**An Ordinance to Apply a Sum of Money for the
Service of the Year ending the 31st day of
December, 1927.**

Date of Assent.

[31ST DECEMBER, 1926.]

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 Appropriation Ordinance, 1926.”

Public
Revenue
charged.

2. The Public Revenue for the year 1927, 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 twenty-seven, with a sum of two million, five hundred and seventy thousand, and sixty-four 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 authorised and required from time to time upon the Warrant or Order of the Governor to pay out of the Revenue and other funds of the Colony and Protectorate of Kenya, for the several services specified in the Schedule, the said sum of two million, five hundred and seventy thousand, and sixty-four pounds, which will come in course of payment during the year ending on the thirty-first day of December, one thousand nine hundred and twenty-seven.

SCHEDULE.

	£
I. Public Debt Funded	365,000
II. Rent and Interest to H.H. the Sultan of Zanzibar	16,000
III. Pensions and Gratuities	93,000

Carried forward ... £474,000

	<i>Brought forward</i> ...	£474,000
IV.	His Excellency the Governor ...	16,081
V.	Conference of East African Governors ...	2,015
VI.	Secretariat and Legislative Council ...	21,328
VII.	" Official Gazette " and Printing ...	24,923
VIIa.	" Official Gazette " and Printing— Extraordinary ...	5,280
VIII.	Administration ...	265,984
VIIIa.	Administration—Extraordinary ...	300
IX.	Treasury ...	24,105
X.	Customs Department ...	43,504
XI.	Port and Marine Departments ...	—
XII.	Audit Department ...	17,059
XIII.	Judicial Department ...	25,208
XIV.	Registrar-General's Department ...	3,736
XV.	Legal Department ...	9,975
XVI.	Police ...	147,717
XVII.	Prisons ...	44,391
XVIII.	Medical Department ...	198,265
XIX.	Education ...	140,962
XIXa.	Education—Extraordinary ...	10,351
XX.	Military ...	128,465
XXI.	Post Office and Telegraphs ...	145,696
XXIa.	Post Office and Telegraphs— Extraordinary ...	5,440
XXII.	Agricultural Department ...	121,532
XXIIa.	Agricultural Department— Extraordinary ...	1,650
XXIII.	Forest Department ...	34,400
XXIV.	Game Department ...	9,705
XXV.	Land Department ...	43,029
XXVI.	Miscellaneous Services ...	72,484
XXVII.	Interest ...	170,000
XXVIII.	Public Works Department ...	91,113
XXIX.	Public Works—Recurrent ...	169,190
XXX.	Public Works—Extraordinary ...	97,176
XXXI.	Trade Information and Publicity Bureau ...	5,000
	Total ...	£2,570,064

**An Ordinance to make Provision for the Payment
of a Tax for Purposes of European Education.**

Date of Assent.

[31ST DECEMBER, 1926.]

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 European Education Tax Ordinance, 1926.”

Interpretation

2. In this Ordinance, unless inconsistent with the context :—

“ The tax ” means the tax prescribed by this Ordinance ;

“ District Commissioner ” includes an assistant district commissioner ;

“ European ” means a male person of European origin or descent ;

“ Temporary visit ” means a visit to the Colony not exceeding six months in duration.

European Education Tax.

3. There shall be paid in every year by every European a tax of thirty shillings to be called “ the European Education Tax.”

Tax, when payable.

4. (1) The tax shall be paid on or before the thirty-first day of March in each year :

Provided that—

(a) any European who is not residing in the Colony on the first day of January, or who, although residing in the Colony on that date, leaves the Colony before the thirty-first day of March without having paid the tax for that year, shall pay such tax within one month after his arrival in or return to the Colony, as the case may be ; and

No. XXXIII. *European Education Tax*

1926.

- (b) any European who arrives in the Colony after the thirtieth day of June in any year and who has not previously resided in the Colony during the same year shall be required to pay only half the amount of the tax.

(2) Any European who fails to pay the tax within one month after the thirty-first day of March, or within one month after his arrival in or return to the Colony, as the case may be, shall be liable to pay double the amount of the tax in respect of which he is in default and in lieu thereof: Provided that such liability shall not accrue if such European can show that the default was due to causes beyond his control.

Tax doubled if not paid within one month.

5. The tax shall be paid by the person liable to pay the same to a district commissioner at the office of the officer to whom payment is made.

Where and to whom tax to be paid.

6. A district commissioner shall give to the person paying the tax a receipt in the prescribed form.

District commissioner to give receipt in the prescribed form.

7. Every person paying the tax shall furnish the officer 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 required by such officer, attend personally at the office of such officer for such purpose.

Person paying tax to provide information in preparing the receipt and if required shall attend at the office for such purpose.

8. Any person who shall wilfully furnish a district commissioner with false particulars as to any of the information required by such officer in preparing a receipt, or who, on being required to attend at the office of a district commissioner, shall neglect or refuse to attend or attending, shall neglect or refuse to furnish any information required as aforesaid, shall, on conviction, be liable to a fine not exceeding fifteen pounds, or to imprisonment for a term not exceeding two months.

Penalty for furnishing false particulars or refusing to attend or give information when required.

9. Whenever any person shall make default in the payment of the tax due and payable by him any magistrate having jurisdiction in the district or place in which the person in default is for the time being staying or residing, may issue a summons directing the defaulter to attend before him, at a time to be named in the summons, to show cause why he should not be ordered to pay the amount due as a judgment debt.

Magistrate may call on defaulter to appear and show cause why he should not pay the tax.

Magistrate may order person in default to pay amount of tax and costs into Court.

10. If a summons for enabling a defaulter to show cause as mentioned in the last preceding section is issued, it shall be lawful for the magistrate on the date named in the summons or at any other date to which the hearing may be adjourned, to order him to pay into Court the amount of the unpaid tax, and such costs and expenses as are for this purpose from time to time fixed by the Governor, or to order him to pay into Court any part of such amount which the magistrate may deem the defaulter able to pay or arrange for paying, within seven days of the order or within such extended time as may be determined by the magistrate, and either in a lump sum or by instalments.

Imprisonment for failure to obey order

11. (1) If the person summoned as aforesaid fails to comply with the summons without lawful excuse or if he makes default in payment into Court, in the manner aforesaid, it shall be lawful for the magistrate to commit such person to prison, without hard labour, for a term not exceeding six weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term): Provided that no such committal shall be ordered for default in payment as aforesaid unless it be proved to the satisfaction of the magistrate that the person making the default either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses and neglects to pay the same.

Proviso.

Proof as to means of defaulter.

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks just, and, for the purpose of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has jurisdiction in civil matters, and such debtor and witnesses may be examined on oath.

Order of committal.

(3) Every order of committal under this section shall be issued, obeyed, and executed in manner similar to commitments by a Court in the exercise of jurisdiction in civil cases.

Imprisonment not to extinguish liability.

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

Tax, etc., unpaid leviable by attachments and sale of movable property.

(5) The amount of any tax due and unpaid, and the sum (if any) ordered to be paid for costs and expenses under section 10, may, at any time, be levied by the attachment and sale, under the orders of a magistrate, of the movable property

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of the defaulter in like manner as if the same were payable under a decree of a civil court, and a magistrate is hereby empowered to issue such order either on his own motion or on the application of any district commissioner.

12. In the event of the defaulter paying the whole amount ordered to be paid as aforesaid and the cost and expenses of or in connection with any attachment ordered, the magistrate, if a district commissioner, shall grant to the person paying a receipt in the prescribed form, for the amount of the tax paid, or, if not a district commissioner, shall remit to a district commissioner the amount so paid after deducting therefrom such part thereof as may represent the Court costs, and the district commissioner, on the receipt of such sum shall grant to the person who shall have paid the same a receipt in the prescribed form.

Debtor paying whole of amount ordered to be paid.

13. (1) A district commissioner may, at any time, require any European to produce the receipt granted to such European for the payment of the tax last payable and a district commissioner 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.

District commissioner may require production of receipt for tax.

(2) A district commissioner may require any European who refuses or neglects to produce his receipt when requested to furnish him with information as to the office at which he has paid his tax last payable, and with such further information as the district commissioner may require for the purpose of ascertaining whether such European has paid such tax.

If receipt not produced information required to be furnished to district commissioner.

(3) Any European who, without lawful excuse, shall neglect or refuse to produce his receipt when required as aforesaid, or who, having failed or refused to produce his receipt, shall fail 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.

Penalty for refusing to produce receipt or give information.

(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.

Non-production of receipt to be *prima facie* evidence of non-payment of tax.

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Penalty for
producing a
receipt granted
to some other
person or for
giving false
information.

(5) Any European who, being required by a district commissioner to produce his receipt, shall produce a receipt granted to some other person, or, who, having failed or refused to produce his receipt, shall furnish a district commissioner with any false particulars as to any of 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.

Power of
Governor to
remit or refund
the tax.

14. The Governor may by writing under his hand order that any person or class of persons or the inhabitants of any district, area or place shall be exempt from payment of the whole or any portion of the tax leviable under this Ordinance and may in like manner rescind or alter any such order.

Persons exempt.

15. There shall be exempted from the payment of the tax under this Ordinance the persons following—

- (a) every person under the age of eighteen;
- (b) a person on a temporary visit to the Colony, provided that he is not the owner or lessee of land in the Colony, and is not engaged in any employment or business in the Colony.

Burden of proof
of exemption.

16. The burden of proof of exemption from the tax shall lie on the party claiming the exemption.

Power to
make rules.

17. The Governor may, from time to time, make rules prescribing the form of the receipt to be granted under this Ordinance, and generally for the better carrying out of the purposes of this Ordinance, and may attach penalties not exceeding a fine of seven pounds ten shillings for the breach of any such rule.

Commencement.

18. This Ordinance shall commence and come into operation on the first day of January, 1927.

For Rule see from Rules No 581. of 29. 1926. L 1504.

**An Ordinance to make Provision for the Payment
of a Tax for Purposes of Asiatic Education.**

[31ST DECEMBER, 1926.] Date of Assent

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 Education Tax Ordinance, 1926.” Short title.

2. In this Ordinance, unless inconsistent with the context :— Interpretation

“ The tax ” means the tax prescribed by this Ordinance;

“ District Commissioner ” includes an assistant district commissioner;

“ Asiatic ” means a male person of Asiatic race or origin but shall not include an Arab or a Somali;

“ Temporary visit ” means a visit to the Colony not exceeding six months in duration.

3. There shall be paid in every year by every Asiatic a tax of twenty shillings to be called “ the Asiatic Education Tax.” Asiatic Education Tax.

4. (1) The tax shall be paid on or before the thirty-first day of March in each year : Tax, when payable.

Provided that—

(a) any Asiatic who is not residing in the Colony on the first day of January, or who, although residing in the Colony on that date, leaves the Colony before the thirty-first day of March without having paid the tax for that year, shall pay such tax within one month after his arrival in or return to the Colony, as the case may be; and

(b) any Asiatic who arrives in the Colony after the thirtieth day of June in any year and who has not previously resided in the Colony during the same year shall be required to pay only half the amount of the tax.

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Tax doubled
if not paid
within one
month.

(2) Any Asiatic who fails to pay the tax within one month after the thirty-first day of March, or within one month after his arrival in or return to the Colony, as the case may be, shall be liable to pay double the amount of the tax in respect of which he is in default and in lieu thereof : Provided that such liability shall not accrue if such Asiatic can show that the default was due to causes beyond his control.

Where and to
whom tax to be
paid.

5. The tax shall be paid by the person liable to pay the same to a district commissioner at the office of the officer to whom payment is made.

District
Commissioner
to give receipt
in the pre-
scribed form.

6. A district commissioner shall give to the person paying the tax a receipt in the prescribed form.

Person paying
tax to provide
information in
preparing the
receipt and if
required shall
attend at the
office for such
purpose.

7. Every person paying the tax shall furnish the officer 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 required by such officer, attend personally at the office of such officer for such purpose.

Penalty for
furnishing false
particulars or
refusing to
attend or give
information
when required.

8. Any person who shall wilfully furnish a district commissioner with false particulars as to any of the information required by such officer in preparing a receipt, or who, on being required to attend at the office of a district commissioner, shall neglect or refuse to attend or attending, shall neglect or refuse to furnish any information required as aforesaid, shall, on conviction, be liable to a fine not exceeding fifteen pounds, or to imprisonment for a term not exceeding two months.

Magistrate may
call on defaulter
to appear and
show cause why
he should not
pay the tax.

9. Whenever any person shall make default in the payment of the tax due and payable by him any magistrate having jurisdiction in the district or place in which the person in default is for the time being staying or residing, may issue a summons directing the defaulter to attend before him, at a time to be named in the summons, to show cause why he should not be ordered to pay the amount due as a judgment debt.

Magistrate may
order person in
default to pay
amount of tax
and costs into
court.

10. If a summons for enabling a defaulter to show cause as mentioned in the last preceding section is issued, it shall be lawful for the magistrate on the date named in the summons or at any other date to which the hearing may be adjourned to order him to pay into Court the amount of the unpaid tax,

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and such costs and expenses as are for this purpose from time to time fixed by the Governor, or to order him to pay into Court any part of such amount which the magistrate may deem the defaulter able to pay or arrange for paying, within seven days of the order or within such extended time as may be determined by the magistrate, and either in a lump sum or by instalments.

11. (1) If the person summoned as aforesaid fails to comply with the summons without lawful excuse or if he makes default in payment into Court, in the manner aforesaid, it shall be lawful for the magistrate to commit such person to prison, without hard labour, for a term not exceeding six weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term): Provided that no such committal shall be ordered for default in payment as aforesaid unless it be proved to the satisfaction of the magistrate that the person making the default either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses and neglects, to pay the same.

Imprisonment
for failure to
obey order.

Proviso.

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks just, and, for the purpose of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has jurisdiction in civil matters, and such debtor and witnesses may be examined on oath.

Proof as to
means of
defaulter.

(3) Every order of committal under this section shall be issued, obeyed, and executed in manner similar to commitments by a Court in the exercise of jurisdiction in civil cases.

Order of
committal.

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

Imprisonment
not to
extinguish
liability.

(5) The amount of any tax due and unpaid, and the sum (if any) ordered to be paid for costs and expenses under section 10, may, at any time, be levied by the attachment and sale, under the orders of a magistrate, of the movable property of the defaulter in like manner as if the same were payable under a decree of a civil court, and a magistrate is hereby empowered to issue such order either on his own motion or on the application of any district commissioner.

Tax, etc.,
unpaid leviable
by attachments
and sale of
movable
property.

Debtor paying whole of amount ordered to be paid.

12. In the event of the defaulter paying the whole amount ordered to be paid as aforesaid and the cost and expenses of or in connection with any attachment ordered, the magistrate, if a district commissioner, shall grant to the person paying a receipt in the prescribed form, for the amount of the tax paid, or, if not a district commissioner, shall remit to a district commissioner the amount so paid after deducting therefrom such part thereof as may represent the Court costs, and the district commissioner, on the receipt of such sum shall grant to the person who shall have paid the same a receipt in the prescribed form.

District commissioner may require production of receipt for tax.

13. (1) A district commissioner may, at any time, require any Asiatic to produce the receipt granted to such Asiatic for the payment of the tax last payable and a district commissioner 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 district commissioner.

(2) A district commissioner may require any Asiatic who refuses or neglects to produce his receipt when requested to furnish him with information as to the office at which he has paid his tax last payable, and with such further information as the district commissioner may require for the purpose of ascertaining whether such Asiatic has paid such tax.

Penalty for refusing to produce receipt or give information

(3) Any Asiatic, who without lawful excuse, shall neglect or refuse to produce his receipt when required as aforesaid, or who, having failed or refused to produce his receipt, shall fail to furnish the information which may be required of him under the preceding subsection, shall, on conviction, be liable to a fine not exceeding seven pounds ten shillings or to imprisonment for a term not exceeding one month.

Non-production of receipt to be *prima facie* evidence of non-payment of tax.

(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.

Penalty for producing a receipt granted to some other person or for giving false information

(5) Any Asiatic who, being required by a district commissioner to produce his receipt, shall produce a receipt granted to some other person, or, who, having failed or refused to produce his receipt, shall furnish a district commissioner with any false particulars as to any of the information which may

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be required of him under subsection (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.

14. The Governor may by writing under his hand order that any person or class of persons or the inhabitants of any district, area or place shall be exempt from payment of the whole or any portion of the tax leviable under this Ordinance and may in like manner rescind or alter any such order.

Power of Governor to remit or refund the tax.

15. There shall be exempted from the payment of the tax under this Ordinance the persons following—

Persons exempt.

(a) every person under the age of eighteen;

(b) a person on a temporary visit to the Colony, provided that he is not the owner or lessee of land in the Colony, and is not engaged in any employment or business in the Colony.

16. The burden of proof of exemption from the tax shall lie on the party claiming the exemption.

Burden of proof of exemption

17. The Governor may, from time to time, make rules prescribing the form of the receipt to be granted under this Ordinance, and generally for the better carrying out of the purposes of this Ordinance, and may attach penalties not exceeding a fine of seven pounds ten shillings for the breach of any such rule.

Power to make rules.

18. This Ordinance shall commence and come into operation on the first day of January, 1927.

Commencement

FA Rule 22 Jan 25th 20 582 of 09 RLn 29 1927
in 1505