



COLONY AND PROTECTORATE OF KENYA.

ORDINANCES

ENACTED DURING THE YEAR

1929

VOL. VIII (NEW SERIES)

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TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION
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Year and No of Ordinance	Short Title	How Affected	Ordi- nance of 1928
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COLONY AND PROTECTORATE OF KENYA.

No. 1 OF 1929.

[23RD FEBRUARY, 1929.] Date of assent.

**An Ordinance to provide for the Conservation,
Control, and Distribution of Foodstuffs in
the Colony during the Present Year.**

23rd February, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Food Control Ordinance, 1929.” Short title.

2. In this Ordinance, the term “ foodstuff ” includes anything capable of being used as food for man or of being converted into food for man. Interpretation.

3. (1) Without prejudice to any other power of prohibiting or regulating the exportation of goods from the Colony, the Governor may from time to time, by proclamation, prohibit, restrict or regulate the exportation from the Colony or from any area or place therein of any foodstuff. Power to prohibit exportation of foodstuffs.

(2) Every person concerned in the exportation or attempted exportation of any foodstuff in contravention of any proclamation issued under this section shall be guilty of an offence against this Ordinance, and shall be liable, on conviction by a magistrate, for every such offence, to a penalty not exceeding five hundred pounds or to imprisonment of either description for a period not exceeding two years, or to both.

4. (1) For the purposes of this Ordinance there shall be established a Food Control Board (hereinafter referred to as “ the Board ”) which shall consist of :— Establishment of Food Control Board.

(a) The Director of Agriculture as Chairman ;

(b) The Treasurer as Deputy Chairman ;

(c) The Chief Native Commissioner,

and three other persons, not being members of the public service, to be nominated by the Governor.

(2) The Chairman or Deputy Chairman and two other members shall form a quorum.

(3) Questions before the Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the Chairman or Deputy Chariman, as the case may be, shall have a second or casting vote.

(4) Each member of the Board (not being a member of the public service) may, in the discretion of the Board, be paid out of the funds of the Board such reasonable out-of-pocket expenses as may from time to time be incurred by him in the execution of his duties as a member of the Board.

**Appointment
of Secretary
and staff.**

5. (1) The Board may, subject to the approval of the Governor, appoint a fit and proper person to act as Secretary to the Board, and may, subject to the like approval, appoint such staff as to the Board may appear necessary.

(2) The Secretary to the Board shall exercise such powers and perform such duties as may be assigned to him by the Board.

(3) The Secretary and staff shall be remunerated out of the funds of the Board at such rates as the Governor in Council may, on the recommendation of the Board, prescribe.

**Funds of the
Board.**

6. The funds of the Board for the purpose of the exercise of its powers and the performance of its duties under this Ordinance shall consist of such moneys as the Governor may, with the sanction of the Legislative Council, from time to time authorise the Treasurer to pay to the Board.

**Powers and
duties of
Board.**

7. (1) The powers and duties of the Board shall be as follows :—

(a) To advise the Governor in regard to the issue, from time to time, of proclamations under section 3 of this Ordinance ;

(b) To order all persons holding or controlling stocks of any foodstuffs for the purpose of sale, whether by wholesale or retail, to make full and accurate returns

in writing, at such periods or within such time as may be stated in the order, showing the quantity of any foodstuffs held or controlled by such persons ;

- (c) To order any person holding or controlling stocks of any foodstuff to refrain from disposing, whether by sale or otherwise, of such stocks or any part thereof without the written permission of the Board ;
- (d) To acquire, at such prices as may be fixed by the Board, such quantities of foodstuffs as may from time to time be required by the Board for purposes of famine relief, and to require delivery of foodstuffs so acquired at such place as may be named by the Board ;
- (e) To dispose, in such manner and on such terms as the Board may think fit, of any foodstuffs acquired under the last preceding paragraph ;
- (f) To fix, by order, the maximum price at which any foodstuff may be sold or purchased, either by wholesale or retail. Any order under this paragraph may be of general application or may apply to any particular locality or localities ;
- (g) To purchase outside the Colony and to import such foodstuffs as in the opinion of the Board may from time to time be required to supplement local supplies ;
- (h) To arrange for the delivery of foodstuffs at convenient centres for the purpose of distribution in areas where, in the opinion of the Board, famine relief is required ;
- (i) To requisition, at such rates as may be determined by the Board, such means of transport as may from time to time be required by the Board ;
- (j) Subject to the approval of the Governor, to make Rules for the better carrying out of the powers and duties of the Board and of the provisions of this Ordinance ;
- (k) To draw up and promulgate such forms as the Board may consider necessary.

(2) Every order made under paragraphs (b) and (f) of the preceding sub-section shall be published in the Gazette and shall take effect as from the date of such publication.

Offences.

8. Any person who, without reasonable excuse, the proof of which shall lie upon such person—

- (a) fails or neglects to make any return ordered by the Board under sub-section (1) (b) of the last preceding section, or who makes any return which is false or inaccurate; or
- (b) disposes or contracts or attempts to dispose of any stocks of foodstuffs or any part thereof contrary to an order made under sub-section (1) (c) of the last preceding section; or
- (c) fails to deliver at such place as may be named by the Board any foodstuffs acquired by the Board under sub-section (1) (d) of the last preceding section; or
- (d) sells or purchases, or contracts or attempts to sell or purchase, whether on credit or for cash, any foodstuffs in respect of which a maximum price has been fixed by the Board under sub-section (1) (f) of the last preceding section, at a price exceeding the price so fixed; or
- (e) fails to provide such means of transport as may be in his possession or under his control when such means of transport has been requisitioned by the Board under sub-section (1) (i) of the last preceding section; or
- (f) contravenes or fails to comply with any Rule made by the Board under sub-section (1) (j) of the last preceding section; or
- (g) obstructs or hinders the Board or any member thereof or any person acting under the authority of the Board in the lawful exercise of any power or performance of any duty conferred or imposed upon the Board under this Ordinance,

shall be guilty of an offence against this Ordinance.

Power to
license
dealers in
foodstuffs.

9. (1) The Board may, in its discretion, grant licences to fit and proper persons to deal in foodstuffs, and may, by order published in the Gazette, prohibit the sale to or purchase from any person other than a licensed dealer of any such foodstuff.

(2) Any person who, without reasonable excuse, the proof of which shall lie upon such person, contravenes any order made under this section shall be guilty of an offence against this Ordinance.

10. (1) Any person who is guilty of any offence against this Ordinance or against any Rule made thereunder for which no penalty is expressly provided shall be liable, on conviction before a magistrate, for every such offence, to a penalty not exceeding one hundred pounds or to imprisonment of either description for a period not exceeding one year, or to both.

General
penalty for
offences.

(2) Any person who aids, abets, counsels or procures the commission of any offence against this Ordinance shall be deemed to have committed such offence and shall be punishable accordingly.

Aiding or
abetting
offences.

11. Offences against this Ordinance shall be cognizable to the police.

Offences
cognizable
to the police.

12. Any person duly authorised in writing by the Board may, at all reasonable times, enter upon and into any land, house, shop, vessel or any premises within the Colony for the purpose of ensuring the due carrying out of the provisions of this Ordinance or any orders or Rules made thereunder, and may examine and inspect the stock of foodstuffs therein; and such person may, in case of opposition or obstruction, use such force as may be necessary to effect such entry, and shall not be liable for any damage directly or indirectly occasioned by such forcible entry.

Power to
enter premises.

13. (1) If any person is ordered by the Board under section 7 (1) (c) of this Ordinance to refrain from disposing of any foodstuffs, and such foodstuffs are not subsequently acquired by the Board under section 7 (1) (d), the Board shall pay to such person compensation for any loss proved to the satisfaction of the Board to have been sustained by him in consequence of his compliance with the order of the Board.

Provision for
compensation
in certain
cases.

(2) Any person who is prohibited from exporting any foodstuff in consequence of the issue of any proclamation under section 3 of this Ordinance may apply to the Board for compensation for any loss sustained by him in consequence of

No. I.*Food Control***1929**

such prohibition, and the Board may pay to such person compensation for any loss proved to the satisfaction of the Board to have been so sustained by him.

**Protection in
case of breach
of contract.**

14. No person shall be liable for any breach of contract if such breach is caused by any proclamation under section 3 or by any order made by, or the exercise of any power conferred upon, the Board under this Ordinance.

**Duration of
Ordinance.**

15. This Ordinance shall continue in force until the thirty-first day of December, 1929, and shall then expire.

1929

Abuse of Opiates Prevention

No. II

No. 2 OF 1929.

[8TH JULY, 1929.] Date of assent.

An Ordinance to Amend the Abuse of Opiates Prevention Ordinance.*8th July, 1929.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Abuse of Opiates Prevention (Amendment) Ordinance, 1929,” 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. In this Ordinance, unless the context otherwise requires :— Interpretation.

“ The Convention ” means the Convention signed at the Second Opium Conference at Geneva on the 19th February, 1925 ;

“ Export authorisation ” means an authority in writing issued by the Government of any country signatory to the Convention authorising the export therefrom of any opiate specified therein ;

“ Import certificate ” means a certificate issued by the Government of any country signatory to the Convention authorising the import into such country of any opiate specified therein ;

“ Diversion certificate ” means a certificate issued under this Ordinance or by the Government of any country signatory to the Convention through which any opiate may have passed in transit to the Colony authorising the diversion of any opiate to any country other than that specified as the importing country in the export authorisation ;

“ Ship ” includes every description of vessel used in navigation or for the carriage or storage of goods ;

No. II.*Abuse of Opiates Prevention***1929**

“ Government ” includes any ministry or department of Government charged with the administration of the law relating to any opiates to which the Principal Ordinance refers.

Opiate
entering the
Colony in
transit.

3. Any opiate coming into the Colony in the course of transit to another country, whether or not it is removed from the ship or other conveyance in which it is being conveyed, may be seized by any officer of customs, administrative officer, police officer or other person authorised by the Governor in that behalf unless—

- (a) the opiate is imported from a place from which such opiate may by the law of that place legally be exported under a through bill of lading for any place into which such opiate may by the law of that place legally be imported; and
- (b) the opiate is accompanied by the export authorisation under which such opiate was exported or by a diversion certificate and by an import certificate.

Report of
presence of
opiate in a ship

4. The presence of any opiate on board any ship shall be declared in writing to the Commissioner of Customs, or such other officer as may be appointed by the Governor in that behalf, by the master of the ship within four hours after the arrival of the ship in the territorial waters of the Colony: Provided that if the office of such Commissioner of Customs or such other officer is not open for the four hours after the arrival of the ship the declaration required by this section may be made to the officer in charge of the nearest police station.

No opiate to be
moved without
permit.

5. No opiate coming into the Colony shall be—

- (a) removed from the ship on which it was conveyed; or
- (b) in any way moved in the Colony after removal from such ship; or
- (c) exported, whether or not such opiate has been removed from such ship,

except under, and in accordance with, a removal or export permit (as the case may be) issued by the Commissioner of Customs, in the form shown in the Schedule hereto.

6. No export permit shall be issued under section 5 until there shall have been produced to the Commissioner of Customs—

Issue of
permit.

- (a) an import certificate; and
- (b) an export authorisation or a diversion certificate containing the particulars set out in sub-section (2) of section 7.

7. (1) No consignment of any opiate coming into the Colony shall be diverted to any destination other than that named in the copy of the export certificate which accompanies it except by virtue of a diversion certificate issued by the Governor or such person as the Governor may authorise in that behalf.

Diversion of
consignments

(2) A diversion certificate shall only be issued after receipt of an import certificate from the Government of the country to which it is proposed to divert such consignment, and shall contain the following particulars:—

- (a) The quantity of any opiate in such consignment;
- (b) The name and address of the exporter and the name and address of the importer of such consignment;
- (c) The period within which the consignment shall be despatched to its destination;
- (d) The number and date of the import certificate and the authority by whom it has been issued;
- (e) The name of the country from which the consignment was originally exported.

(3) Upon the issue of a diversion certificate the copy of the export authorisation accompanying any consignment on the arrival of such consignment in the Colony shall be detained by the Governor and returned to the Government or other authority issuing such authorisation together with a notification of the name of the country to which such consignment has been diverted.

8. Notwithstanding anything contained in this Ordinance when any opiate is unaccompanied by the documents specified in section 3 (b) by reason of the fact that the country to which such opiate is consigned is not a signatory to the Convention the Commissioner of Customs may at his discretion issue an export permit in respect of such opiate.

Export of opiate
to country not
a party to
Convention.

No. II.*Abuse of Opiates Prevention***1929**

Opiate carried
by aircraft.

9. (1) The provisions of this Ordinance shall apply to any opiate transported by air: Provided that if the aircraft carrying such opiate passes over the Colony without landing the provisions of this Ordinance shall not apply to such aircraft.

(2) Any person in charge of any aircraft landing in the Colony, whether through stress of weather or otherwise, shall within four hours declare in writing to the nearest officer of customs the presence in such aircraft of any opiate: Provided that if the office of such officer of customs is not open for the four hours immediately after the landing of such aircraft the declaration required by this section may be made to the officer in charge of the nearest police station.

(3) Any person in charge of any aircraft forced to land in the Colony through stress of weather in such a place that he is unable to comply with the last preceding sub-section shall at once report to the nearest administrative officer, thereafter forwarding to the nearest customs officer a report in writing specifying the amount of opiate carried in such aircraft.

10. (1) Any person—

- (a) who acts in contravention of, or fails to comply with, any provision of this Ordinance; or
- (b) who acts in contravention of, or fails to comply with, the conditions of any certificate or permit granted under or in pursuance to this Ordinance; or
- (c) who for the purpose of obtaining, whether for himself or for any other person, the issue of any such certificate or permit as aforesaid, makes any declaration or statement which he knows to be false in any particular, or knowingly alters, produces or makes use of any such declaration, statement or any document containing the same; or
- (d) who in the Colony aids, abets, counsels or procures the commission in any place outside the Colony of any offence punishable under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which if committed in the Colony would constitute an offence against this Ordinance,

shall be guilty of an offence against this Ordinance.

(2) Every person guilty of an offence against this Ordinance shall, in respect of each offence, be liable to a fine not exceeding one thousand pounds, or to imprisonment of either description for a period not exceeding ten years, or to both such fine and imprisonment, and shall, in every case on conviction for the offence, forfeit to His Majesty all articles in respect of which the offence was committed, and the court before which the offender was convicted may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(3) Any offence against this Ordinance shall be triable before a magistrate holding a court of the first or second class.

11. The Governor in Council may from time to time make Rules for any of the purposes following :— Power to make Rules.

- (a) Providing for the forms of any declarations, certificates or permits made or issued for the purposes of this Ordinance and the conditions (if any) to be contained therein.
- (b) Prescribing the hours within which and the manner in which any declaration of any opiate shall be made by the master or person in charge of any ship or other conveyance.
- (c) Regulating the arrival and berthing of ships carrying any opiate.
- (d) Providing for the rendering of periodical returns by any person being in possession of or producing or manufacturing any opiate within the Colony, and for the rendering by any person of an estimate of the amount of any opiate to be imported by him during a period to be prescribed by the Rules, to such officer as the Governor in Council shall appoint in that behalf.
- (e) Generally for the better carrying out of the objects and purposes of this Ordinance.

12. Sub-section (1) of section 12 of the Principal Ordinance is hereby amended by the insertion at the commencement thereof of the words " Subject to the provisions of this Ordinance." Amendment of section 12 (1) of Principal Ordinance.

No. II.

Abuse of Opiates Prevention

1929

SCHEDULE.

(Sl. 5).

FORM No. 1.

REMOVAL PERMIT.

*The Abuse of Opiates Prevention (Amendment) Ordinance,
1929.*

Permission is hereby granted to.....
subject to the conditions set out below, to move the opiate
described hereunder from.....
to.....

Importing ship.	Date of arrival.	Number of packages.	Marks and numbers.	Kind of opiate.	Weight.	Remarks.

CONDITIONS.

1. This permit may be used only between.....a.m.,
and.....p.m., on.....the.....19.....
2. If this permit is not used within the hours and on
the day specified, it must be returned to the Commissioner
of Customs forthwith.
3. The opiate must not be moved unless a customs
officer is present.
4. The permit must be produced whenever demanded
by a customs officer or police officer.
5.

Date.....

.....
Commissioner of Customs.

1929

Abuse of Opiates Prevention

No. II.

(Sec. 5).

FORM No. 2.

EXPORT PERMIT.

*The Abuse of Opiates Prevention (Amendment) Ordinance,
1929.*

Permission is hereby granted to.....
 subject to the conditions set out below, to export the opiate
 described hereunder to.....
 by the s.s.....

Importing ship.	Date of arrival.	Number of packages.	Marks and numbers.	Kind of opiate.	Weight.	Remarks.

CONDITIONS.

1. This permit may be used only between.....a.m.,
 and.....p.m., on.....the.....19....

2. If this permit is not used within the hours and on
 the day specified, it must be returned to the Commissioner
 of Customs forthwith.

3. The opiate must not be moved unless a customs
 officer is present.

4. The permit must be produced whenever demanded
 by a customs officer or police officer.

5.

Date.....

.....
Commissioner of Customs.

No. III.

Specific Loan

1929

No. 3 OF 1929.

Date of assent.

[8TH JULY, 1929.]

**An Ordinance to Amend the Specific Loan
Ordinance, 1927.**

Date of
commencement.*8th July, 1929.*

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 Specific Loan
(Amendment) Ordinance, 1929,” and shall be read as one with
the Specific Loan Ordinance, 1927, hereinafter referred to as
“ the Principal Ordinance.”

No. 22 of
1927.Amendment
of section 4
of Principal
Ordinance.

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

Cap. 46.

“ 4. Contribution to sinking fund as contemplated
by sections 14 and 28 of the General Loan and Inscribed
Stock Ordinance shall commence in respect of any stock
or debentures issued under this Ordinance not later than
three years after the date from which the interest on such
stock or debentures shall commence to run.”

1929

Non-Native Poll Tax

No. IV

No. 4 OF 1929.

[8TH JULY, 1929.] Date of assent.

**An Ordinance to Amend the Non-Native Poll Tax
Ordinance.**

8th July, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Non-Native Short title.
Poll Tax (Amendment) Ordinance, 1929,” and shall be read
as one with the Non-Native Poll Tax Ordinance (Chapter
52 of the Revised Edition), hereinafter referred to as “ the
Principal Ordinance ”.

2. Section 2 of the Principal Ordinance is hereby Interpretation.
amended by the insertion of the following definition :—

“ ‘ Collector ’ includes a district commissioner,
an assistant district commissioner, a liwali, a mudir and
any person appointed by the Governor to assist in the
collection of taxes leviable under this Ordinance ”.

3. (1) Sections 5, 6, 8 and 13 of the Principal Ordinance Substitution of
are hereby amended by the substitution of the word “ collector ”
“ collector ” for the words “ district commissioner ” where- for “ district
ever the latter occur. commis-
sioner ” in
Principal
Ordinance.

(2) Section 8 and sub-sections (3) and (5) of section 13
of the Principal Ordinance are hereby amended by the
insertion of the words “ by a magistrate ” after the words
“ on conviction.”

No. V.

Crown Lands

1929

No. 5 OF 1929

Date of assent.

[8TH JULY, 1929.]

An Ordinance to Amend the Crown Lands Ordinance.

Date of commencement.

8th July, 1929.

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, 1929,” and shall be read as one with the Crown Lands Ordinance (Chapter 140 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Interpretation.

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

“ Communal Reserve ” means any area reserved for the joint benefit of the Arab inhabitants and a Native tribe or Native tribes of the Colony.

Power to establish Communal Reserves.

3. 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 Communal Reserve.

Application of Part VI of Principal Ordinance to Communal Reserves.

4. The provisions of Part VI of the Principal Ordinance (relating to the reservation of land for the use of Native tribes) as amended by the Crown Lands (Amendment) Ordinance, 1926, shall apply, *mutatis mutandis*, to any area declared under the last preceding section to be a Communal Reserve.

1929

Births and Deaths Registration

No. VI.

No. 6 OF 1929.

[8TH JULY, 1929.] Date of assent.

An Ordinance to Amend the Births and Deaths Registration Ordinance, 1928.

8th July, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Births and Deaths Registration (Amendment) Ordinance, 1929,” and shall be read as one with the Births and Deaths Registration Ordinance, 1928, hereinafter referred to as “ the Principal Ordinance.” Short title.

2. Section 2 of the Principal Ordinance is hereby amended by the addition of the following definition :— Amendment to
section 2 of
the Principal
Ordinance.

“ ‘ Medical Officer of Health ’ means a Medical Officer of Health appointed under the provisions of the Public Health Ordinance, or any other Ordinance, to carry out the duties of Medical Officer of Health in any area.” Cap. 124.

3. The following section shall be inserted as section 3A of the Principal Ordinance :— Appointment of
Principal
Registrar.

“ 3A. The Governor shall appoint a Principal Registrar of Births and Deaths for the Colony, who in addition to performing the duties of a Registrar, and carrying out such instructions as may be issued by the Registrar General, shall have such duties and powers as may be prescribed.”

4. The following section shall be inserted as section 16A of the Principal Ordinance :— Certificates of
cause of death.

“ 16A. (1) In the case of the death of any person who has been attended during his last illness by a registered or licensed medical practitioner, that practitioner shall sign a certificate stating to the best of his knowledge and belief the cause of death.

(2) Every such certificate of cause of death shall be forwarded forthwith by the medical practitioner by whom it is signed to the Registrar, and the medical practitioner, on signing a certificate as aforesaid shall give in the form prescribed by the Rules to some person required by this Ordinance to give information concerning the death, notice in writing of the signing of the certificate.

(3) Where an inquest is held on the body of any deceased person a medical certificate of the cause of death need not be forwarded to the Registrar, but the magistrate holding the inquest shall send to the Registrar a copy of his finding, which shall be sufficient.

(4) Every medical practitioner who refuses or fails without reasonable excuse to comply with any of the provisions of this section shall be liable to a penalty not exceeding ten pounds."

Amendment to
section 17 (1)
of the
Principal
Ordinance.

5. Sub-section (1) of section 17 is hereby amended by the insertion, following the word " death " in the fourth line thereof, of the following words :—

" or upon production to him at such time of notice in writing signed by a medical practitioner, in the form prescribed by the Rules, that such a certificate has been signed."

Amendment to
section 18 (2)
of the
Principal
Ordinance.

6. Sub-section (2) of section 18 of the Principal Ordinance is hereby repealed and the following sub-section substituted therefor :—

"(2) If the case does not appear from such enquiries to be one to which section 141 or section 143 of the Criminal Procedure Ordinance applies, the magistrate or police officer or other person as aforesaid shall report accordingly to the Registrar who shall issue a permit for the interment or other disposal of the body."

Cap. 7.

Weekly
statements to
Medical
Officer of
Health and
Statistician.

7. Section 22 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

" 22. It shall be the duty of every Registrar, at the close of each week, to forward to the Medical Officer of Health in whose area his registration area is situate, and to the Statistician, a statement of the births and deaths registered by him during such week."

1929

Legal Practitioners

No. VII.

No. 7 OF 1929.

[8TH JULY, 1929.] Date of assent.

An Ordinance to Amend the Legal Practitioners Ordinance.

8th July, 1929.

Date of commencement.

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

1. This Ordinance may be cited as the "Legal Practitioners (Amendment) Ordinance, 1929", and shall be read as one with the Legal Practitioners Ordinance (Chapter 10 of the Revised Edition), hereinafter referred to as "the Principal Ordinance".

Short title.

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

Penalty for wrongfully acting as an advocate.

" 5. (1) Any person who wilfully and falsely pretends to be or takes or uses any name, title, addition or description implying that he is duly qualified to act as an advocate or that he is recognised by law as so qualified, shall be guilty of an offence under this Ordinance, and be liable to a penalty not exceeding the sum of seventy-five pounds for each such offence.

(2) No costs, fee, reward or disbursement on account of or in relation to any act or proceeding done or taken by any person who acts as an advocate, without being duly qualified so to act, shall be recoverable in any action, suit or matter by any person or persons whomsoever.

(3) For the purposes of this section a person shall be deemed to be duly qualified to act as an advocate if he shall have in force at the time at which he acts as such advocate, a duly signed and sealed certificate authorising him so to do, in accordance with the provisions of the laws for the time being relating to advocates, or if he shall be a person entitled to practise in any Court of the Colony and Protectorate of Kenya under any Ordinance, Rules or other law for the time being in force".

Date of assent.

[8TH JULY, 1929.]

**An Ordinance to Amend the Stage Plays and
Cinematograph Exhibitions Ordinance.**

Date of
commencement.

8th July, 1929.

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 Stage Plays and Cinematograph Exhibitions (Amendment) Ordinance, 1929,” and shall be read as one with the Stage Plays and Cinematograph Exhibitions Ordinance (Chapter 73 of the Revised Edition), hereinafter called “ the Principal Ordinance ”.

Interpretation.

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

(a) by the substitution of the following for the definition of “ Cinematograph exhibition ” :—

“ ‘ Cinematograph exhibition ’ means any exhibition of pictures or other optical effects presented by means of a cinematograph or other similar apparatus whether the characters concerned in such pictures or other optical effects talk or not ”; and

(b) by the addition of the following definition :—

“ ‘ Cinematograph picture ’ means any picture made by means of a cinematograph or other similar apparatus and intended for public exhibition.”

Insertion of
section 2A in
the Principal
Ordinance.

3. The following section shall be inserted between sections 2 and 3 of the Principal Ordinance :—

“ 2A. No person shall direct, or take part in, or assist in, the making within the Colony of any cinematograph picture, unless the licence of the licensing officer

in respect of the making of such cinematograph picture shall previously have been obtained as hereinafter provided."

4. Section 6 of the Principal Ordinance is hereby amended and shall be read as if the words "or in respect of the making of any cinematograph picture" were inserted between the word "exhibition" and the word "or" in line three thereof. Amendment of section 6 of the Principal Ordinance.

No. IX.

Appropriation

1929

No. 9 OF 1929.

Date of assent.

[8TH JULY, 1929.]

An Ordinance to Apply a Sum of Money for the Service of the Year ending the 31st day of December, 1929.

Date of commencement.

8th July, 1929.

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, 1929.”

Public Revenue charged.

2. The Public Revenue for the year 1929, 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-nine, with a sum of three million one hundred and eighty-eight thousand one hundred and sixty-five 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 three million one hundred and eighty-eight thousand one hundred and sixty-five pounds, which will come in course of payment during the year ending on the thirty-first day of December, one thousand nine hundred and twenty-nine.

1929

Appropriation

No. IX

SCHEDULE.

	£
I. Public Debt Funded	772,500
II. Rent and Interest to H.H. the Sultan of Zanzibar	16,000
III. Pensions and Gratuities	112,840
IV. His Excellency the Governor	18,400
V. Conference of East African Governors	1,750
VI. Secretariat and Legislative Council	20,369
VII. Printing and Stationery	37,843
VIII. Administration	267,220
VIIIa. Administration—Extraordinary	9,470
IX. Statistics and Research	23,388
X. Treasury	27,077
Xa. Treasury—Extraordinary	1,700
XI. Customs Department	48,128
XIa. Customs Department—Extraordinary	400
XII. Audit Department	19,277
XIII. Judicial Department	30,999
XIIIa. Judicial Department—Extraordinary	500
XIV. Registrar-General's Department	5,381
XIVa. Registrar General's Department— Extraordinary	100
XV. Legal Department	9,779
XVI. Police	164,459
XVIa. Police—Extraordinary	2,874
XVII. Prisons	48,006
XVIII. Medical Department	233,506
XVIIIa. Medical Department—Extraordinary	15,055
XIX. Education	175,954
XIXa. Education—Extraordinary	14,055
XX. Military	128,107
XXI. Post Office and Telegraphs	167,517
XXIa. Post Office and Telegraphs— Extraordinary	10,000
XXII. Agricultural Department	148,536
XXIIa. Agricultural Department— Extraordinary	7,350
XXIII. Forest Department	38,232
XXIIIa. Forest Department—Extraordinary	100
XXIV. Game Department	12,066
XXIVa. Game Department—Extraordinary	200
XXV. Survey and Registration Department	40,438
XXVI. Government Coast Agency	5,712

No. IX

	<i>Appropriation</i>	1929
XXVII.	Local Government—Contributions to Local Authorities	95,071
XXVIIa.	Local Government—Contributions to Local Authorities—Extraordinary	17,500
XXVIII.	Miscellaneous Services	51,852
XXVIIIa.	Miscellaneous Services—Extraordinary	5,000
XXIX.	Interest	29,135
XXX.	Public Works Department	145,181
XXXI.	Public Works Recurrent	160,718
XXXII.	Public Works Extraordinary	43,420
XXXIII.	Trade, Information and Publicity Bureau	5,000
	Total	<u>£3,188,165</u>

1929

Tribal Police

No. X.

No. 10 of 1929.

[8TH JULY, 1929.] Date of assent.

**An Ordinance to Provide for the Appointment,
Organisation and Discipline of Tribal Police.**

Ordinance No. 10 of 1929

Repeal the Tribal Police Ordinance, 1929:

Provided that any tribal police officer appointed under the provisions of the Tribal Police Ordinance, 1929, shall be deemed to have been appointed under the provisions of this Ordinance.

(Ordinance No. 13 of 1958, s. 24, with effect from 20-6-58)

2. The district commissioner of any district or area within which the Governor may, by notice in the Gazette, approve of the appointment of tribal police may from time to time appoint fit and proper persons within such district or area to be tribal police officers. Appointment of tribal police.
3. The superintendence of the tribal police throughout the Colony shall vest in such person as the Governor in Council may, by notice in the Gazette, appoint. Superintendence of tribal police throughout Colony.
4. The administration of the tribal police in any province shall vest in the senior commissioner of the province. Administration of tribal police in provinces.
5. It shall be the duty of every tribal police officer—
 - (a) when called upon by any headman appointed under the provisions of the Native Authority Ordinance to assist him in the exercise of the duties imposed upon him by that Ordinance; Duties of tribal police. Cap. 129.
 - (b) to detect and bring offenders to justice and to preserve the public peace and prevent the commission of offences;
 - (c) to obey and execute promptly all orders and warrants lawfully issued to him by any competent authority, and to apprehend all persons whom he is legally authorised to apprehend, or for whose apprehension sufficient ground exists;

- (d) to take charge of all persons who may be committed to his custody by any court or native tribunal;
- (e) to perform such duties and undergo such training as may be ordered by a district commissioner; and
- (f) to act as a messenger in any matter connected with tribal administration or the public service and to obey all lawful orders issued to him by any senior commissioner, district commissioner, assistant district commissioner, liwali, mudir or headman.

Power to enter premises without warrant.

6. It shall be lawful for any tribal police officer for any of the purposes mentioned in the last foregoing section, without a warrant to enter and inspect any hut, or any place of resort of loose or disorderly characters.

Power to lay information.

7. It shall be lawful for any tribal police officer to lay any information before a magistrate, and to apply for a summons, warrant, search warrant, or such other legal process as may by law issue against any person committing an offence.

Power of tribal police officers to inspect licences permits and passes.

8. (1) A tribal police officer may stop and detain any person whom he sees or suspects of doing any act or thing, or of being in possession of anything, for which a licence, permit, or pass is required by the provisions of any Ordinance or other law or regulation and may require such person to produce such licence, permit, or pass.

(2) Any person who shall fail to produce such licence, permit, or pass when called upon by a tribal police officer may be arrested without a warrant unless he shall give his name and address and shall otherwise satisfy the tribal police officer that he will duly answer any summons or other proceedings which may be taken against him.

Protection of tribal police.
Cap. 36.

9. Every tribal police officer, appointed in pursuance of this Ordinance, shall have the protection conferred upon a police officer by section 62 of the Police Ordinance.

Apprehension and detention by tribal police.

10. Sections 224, 225 and 225B of the Indian Penal Code shall apply to the lawful apprehension of any person by a tribal police officer and the lawful detention in custody of any person by a tribal police officer.

11. Whoever assaults or uses criminal force to any tribal police officer in the execution of his duty, or with intent to prevent or deter that tribal police officer discharging his duty, or in consequence of anything done or attempted to be done by such tribal police officer in the lawful discharge of his duty shall be liable to imprisonment of either description for a period not exceeding six months or to a fine not exceeding one hundred and fifty shillings or to both such fine and imprisonment.

Assault in execution of duty.

12. A tribal police officer shall execute the duties imposed upon him by this Ordinance within the district or area to which he is appointed, but shall, if so ordered by a senior commissioner, district commissioner, assistant district commissioner, liwali or mudir, execute such duties in any other area or place, and may without any such order enter any adjoining district or area for the purpose of apprehending suspected persons or protecting life or property.

Tribal police ordinarily to act within their own district.

13. (1) Every tribal police officer who wilfully disobeys any lawful order or warrant, or is guilty of any act or conduct to the prejudice of good order or discipline, shall be liable to punishment by a district commissioner or, save as hereinafter provided, by an assistant district commissioner by—

Penalties.

- (a) confinement to his quarters for a period not exceeding fifteen days; or
- (b) extra duty or guards; or
- (c) fine not exceeding one-third of a month's pay to be levied by stoppages from such pay as may have been prescribed; or
- (d) dismissal from the tribal police:

Provided that no tribal police officer shall be dismissed by an assistant district commissioner and any sentence of dismissal passed by a district commissioner shall be subject to confirmation by the senior commissioner of the province.

(2) In addition to any other punishment to which he may be liable under this section a tribal police officer may be punished with corporal punishment not exceeding fifteen lashes. Every sentence of corporal punishment shall be reported by the district commissioner to the senior commissioner of the province.

(3) No sentence of corporal punishment shall be carried out until a period of twenty-four hours has elapsed from the time of such sentence nor unless under the superintendence of a medical officer, or, in case no medical officer is available of a magistrate nor until such medical officer or magistrate shall certify as to the physical fitness of the offender to undergo such punishment, and in relation thereto such medical officer or magistrate may give such orders for preventing injury to health as he may deem necessary, and if such medical officer or magistrate shall order the punishment to be discontinued it shall be discontinued forthwith.

(4) Any punishment awarded by an assistant district commissioner under this section shall be subject to confirmation by the district commissioner, who may vary or revoke such punishment provided that such punishment shall not be increased.

1929

Registration of Domestic Servants

No. XI.

No. 11 OF 1929.

[15TH JULY, 1929.] Date of assent.

An Ordinance to Provide for the Registration of Domestic Servants.*15th July, 1929.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Registration Short title.
of Domestic Servants Ordinance, 1928.”

2. This Ordinance shall apply to such townships, Application of
districts or areas, and from such date or dates, as the Governor Ordinance.
may from time to time by proclamation in the Gazette
appoint.

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

“ Employer ” includes every person having servants in
his employment ;

“ Servant ” includes every person employed either
wholly or partly in any of the following capacities, that is to
say, cook, house servant (including bedroom and kitchen
servants), waiter, butler, nurse, valet, bar boy, footman, or
chauffeur, or washerman, if in the employment of a single
employer, or in any capacity involving the duties usually
performed by any of the above-mentioned servants by what-
ever style the person acting in such capacity may be called ;

“ Employment ” and “ engagement ” include any
employment or engagement of a servant to render any services
for a remuneration or any engagement whereby services are
rendered by a servant :

“ Registered servant ” means a servant who has been
registered in accordance with the provisions of this Ordinance ;

“ Registrar ” means a Registrar of Domestic Servants appointed under section 4 of this Ordinance and includes a Deputy Registrar ;

“ Registration district ” means any township, district or area to which this Ordinance has been applied.

Appointment
of Registrars.

4. It shall be lawful for the Governor from time to time to appoint for each registration district a Registrar of Domestic Servants and such Deputy Registrars or other officers as he may consider necessary for the purpose of carrying out the provisions of this Ordinance.

EXISTING SERVANTS.

Duty of
employers to
cause servants
to be
registered.

5. It shall be the duty of every employer of servants in any registration district, within one month after the application of this Ordinance to such district, to cause each such servant to be registered, and for this purpose he shall furnish to the Registrar in writing a return showing the name, capacity in which employed, and date of engagement of each such servant, together with the registration number of the certificate (if any) issued to each such servant under the provisions of the Native Registration Ordinance.

Cap. 127.

Servants to
attend
personally
before
Registrar.

6. It shall be the duty of every servant employed in any registration district, within two months after the application of this Ordinance to such district, to attend personally before the Registrar and to furnish such information regarding his country, race or tribe, previous service or antecedents, and such other particulars of identity, as the Registrar may require for the purpose of record in the general register :

Provided that the Registrar shall not make any entry in the general register as to previous service or antecedents unless he has satisfied himself of the credibility of the information furnished to him in relation thereto.

Servants to be
furnished with
pocket
registers.

7. The Registrar shall, on such servant so attending, hand to him a pocket register, in which shall be entered the particulars recorded in the general register. The servant shall hand the pocket register to his employer, who shall retain the same during the continuance of the servant's employment.

8. If any servant whose name appears on any return furnished by an employer to the Registrar, as provided in section 5, shall leave the service of such employer within two months after the application of this Ordinance and before obtaining a pocket register, such employer shall transmit to the Registrar a memorandum of the date and cause of such servant leaving his employment.

Servant
leaving
employment
before pocket
register
supplied.

INTENDING SERVANTS.

9. (1) It shall be the duty of every Registrar to receive applications for registration from persons who are desirous of entering employment as servants within his district.

Registration
of persons
desirous of
becoming
registered
servants

(2) Before registering any applicant under this section the Registrar shall satisfy himself that there are reasonable grounds for believing that such applicant is a fit and proper person to enter domestic service, and if he is so satisfied he shall register such applicant in the general register, recording therein such particulars as he has been able to learn respecting the applicant and his antecedents, and the names of any persons who certify to his respectability. The Registrar shall thereupon issue to the applicant a pocket register in which shall be entered the particulars recorded in the general register.

10. The Registrar shall not grant registration under the last preceding section to any convicted thief or associate of thieves, or to any person known to the police to be leading a disorderly or disreputable life, or who shall have been convicted of any infamous crime :

Registration
to be refused
to convicted
offenders, etc.

Provided that the Registrar may, at the request of any householder who may be willing to give such applicant a trial, grant registration to any applicant if he is satisfied as to the respectability of such householder and that the intention to employ the applicant as a servant is a *bonâ fide* one :

Provided, however, that such registration shall only be valid for employment with the householder who is willing to give such applicant a trial.

GENERAL.

Finger prints
or photographs
of all persons
registered as
servants to be
taken by
Registrar.

11. Upon registering any servant or intending servant under this Ordinance the Registrar shall—

- (a) take the finger prints of such servant or intending servant in such manner as may be prescribed and record such finger prints in the general register and also in the pocket register issued to such servant or intending servant: Provided that photographs may be accepted and affixed in the general register and also in the pocket register in lieu of finger prints if the Registrar is satisfied that such photographs provide sufficient means of identification;
- (b) if such servant be a person to whom the provisions of the Native Registration Ordinance, or any Ordinance amending or replacing the same, apply, record in both the general register and in the pocket register the index letters and number of such servant's registration certificate and shall make an endorsement in such registration certificate to the effect that such person has been registered as a domestic servant and it shall be incumbent upon such servant to produce his registration certificate for the purpose.

Unregistered
servants not to
be employed in
registration
districts.

12. After the application of this Ordinance to any registration district, no person ordinarily resident in such district shall within one month of the application of this Ordinance engage or employ a servant to work in such district unless such servant shall produce his pocket register as evidence of his being a registered servant and unless such pocket register shall record the termination of his last previous employment, if any, as a registered servant.

Particulars of
employment to
be entered in
pocket register.

13. Every employer, whether resident in a registration district or not, shall, on engaging a registered servant, forthwith enter in the pocket register the date on which and the capacity in which such servant is engaged, and shall thereupon forward the pocket register to the Registrar for the district in which such servant is registered. On receipt of the pocket register the Registrar shall insert the particulars recorded therein in the general register. The Registrar shall then return the pocket register to the employer, who shall retain the same during the continuance of the servant's employment.

14. Every employer, whether resident in a registration district or not, shall, on the cessation of the engagement of a registered servant, enter in the pocket register the date and cause of the cessation of the engagement, the character of such servant, and, if the servant was dismissed, the cause of such dismissal. The employer shall also furnish to the Registrar for the district in which such servant is registered a copy of the particulars so entered, and such particulars shall be inserted by the Registrar in the general register unless he intends to take action under section 18 of this Ordinance :

Particulars of cessation of employment to be entered in pocket register.

Provided that if the employer is unable to enter the particulars aforesaid owing to the loss or destruction of the pocket register, he shall report the fact to the Registrar and shall furnish him with the particulars hereinbefore required to be entered in the pocket register. The Registrar shall thereupon, at the expense of the employer, issue to the servant a duplicate pocket register in which shall be entered the particulars aforesaid.

15. If any registered servant is convicted of theft or of any infamous crime or is known to the police to be leading a disorderly or disreputable life the Registrar may, with the approval of the Commissioner of Police, cancel the registration of such servant in which case he shall also cancel the endorsement made under section 11 (b) of this Ordinance. Upon the cancellation of the registration of any servant under the provisions of this section the pocket register issued to such servant shall be returned to the Registrar by the person in whose custody it is at the date of such cancellation.

Power to cancel registration of servants.

16. (1) Every employer shall, when called upon to do so, produce the pocket registers of such registered servants as are in his employment to any police officer not below the rank of sub-inspector.

Production of pocket registers to police when required.

(2) Every unemployed registered servant shall, when called upon to do so, produce his pocket register to any police officer not below the rank of sub-inspector.

17. It shall be lawful for the Registrar for any district, on payment of the prescribed fee, to issue a duplicate pocket register to replace a pocket register originally issued in such district and which may have become worn out or which may have been lost or destroyed.

Replacement of pocket registers.

Offences by employers.

18. (1) Any employer who contravenes any of the provisions or who fails to comply with any of the requirements of this Ordinance or any Rules made hereunder, or who without reasonable cause gives a registered servant an adverse character, or who enters in the pocket register of a registered servant any grave accusation against such servant which he cannot substantiate, shall be liable to a fine not exceeding one hundred shillings.

(2) When any person has been convicted of the offence of giving a registered servant an adverse character without reasonable cause, or of entering in the pocket register of a registered servant any grave accusation against such servant which he cannot substantiate, the court by which he has been convicted may order that the entry in respect of which the accused has been so convicted or any part thereof shall be deleted from the servants' pocket register and from the general register.

(3) Any proceedings under this section may be instituted by or at the instance of the Registrar.

Offences by servants.

19. (1) Any servant who contravenes any of the provisions or who fails to comply with any of the requirements of this Ordinance or any Rules made hereunder shall be liable to a fine not exceeding fifty shillings or to imprisonment of either description for a period not exceeding three months or to both such fine and imprisonment.

(2) Any servant who gives false information on any matter in regard to which he is required by this Ordinance to give information to the Registrar or to any other person shall be liable to a fine not exceeding one hundred shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

General offences.

20. Any person who commits any of the following acts, namely, who—

- (a) wilfully destroys or injures any register book or document, or causes any such book or document to be destroyed or injured;
- (b) falsely makes or counterfeits, or causes to be falsely made or counterfeited, any part of a register book or document;

(c) wilfully inserts or causes to be inserted in any book or document, or certified copy thereof, any false entry;

(d) wilfully gives a false certified copy of any entry in a register book or document or causes such certified copy to be given,

shall be liable to a fine not exceeding two hundred shillings or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

21. (1) It shall be lawful for any police officer to take, for the purposes of identification, the finger prints of any registered servant who may be accused of any offence under this Ordinance.

Evidence of identification of registered servants accused of offences under this Ordinance.

(2) Any finger print taken under this section shall at the trial of any registered servant accused of any offence under this Ordinance be admissible as evidence of identity against such servant if such finger print is certified under the hand of an officer appointed by the Governor for that purpose who shall have compared such finger print with a finger print taken under section 11 of this Ordinance, and the certificate of such officer shall, if produced by the person who took the finger print under this section, be *prima facie* evidence of the facts therein set forth.

22. All offences under the provisions of this Ordinance shall be cognizable to the police.

Offences cognizable to police.

23. Offences under the provisions of the Ordinance shall be triable in the Court of any Magistrate of competent jurisdiction :

Jurisdiction of courts.

Provided that every such Magistrate shall have jurisdiction in any case brought before him against any person being at the time within the area of his jurisdiction whether the offence was committed within such area or not, or whether the person accused of such offence has his usual residence or place of abode within such area or not.

24. The fees set forth in the Schedule shall be payable in respect of the matters referred to in such Schedule and shall be denoted by stamps affixed to the pocket register.

Fees.

**Power to
make Rules.**

25. The Governor in Council may make Rules relating to all or any of the following matters :—

- (a) the duties of Registrars ;
- (b) the form of general registers and pocket registers ;
- (c) altering or adding to the fees set forth in the Schedule ;
- (d) all matters which are required by this Ordinance to be prescribed ;
- (e) generally for the carrying out of the provisions of this Ordinance.

Exemptions.

26. A servant, the total value of whose wages, together with the estimated value of food supplied by the employer, exceeds Sh. 200 per mensem shall be exempt from the provisions of this Ordinance.

SCHEDULE.

FEES.

	<i>Shs. Cts.</i>
Fee payable by an employer on causing an existing servant to be registered (section 5)	2 00
Fee payable by a servant or intending servant on first registration (section 9) including fee for pocket register	2 00
Fee payable by an employer on registering an engagement (section 13)	1 00
Fee payable for duplicate pocket register	2 00

1929

1928 Supplementary Appropriation

No. XII.

No. 12 OF 1929.

[31ST JULY, 1929.] Date of assent.

**An Ordinance to make Further Provision for the
Public Service of the Colony for the Year
ending on the Thirty-first day of December,
1928.**

31st July, 1929.

Date of
commencement.

WHEREAS by the Appropriation Ordinance, 1928, a sum of two millions eight hundred and forty thousand, one hundred and ninety-seven pounds was authorised to be paid out of the revenue and other funds of the Colony for the service of the year ending on the thirty-first day of December, 1928, to be appropriated in conformity with the Schedule to that Ordinance :

AND WHEREAS the expenditure in respect of certain of the heads of expenditure detailed in the said Schedule during the said year exceeded the sum so authorised as aforesaid by two hundred and seventy thousand five hundred and forty-nine pounds two shillings and fifty-five cents under the heads of expenditure detailed in the Schedule hereto :

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

1. This Ordinance may be cited as “ the 1928 Supplementary Appropriation Ordinance, 1929 ”. Short title.

2. The Public Revenue for the year ending on the thirty-first day of December, 1928, and other funds of the Colony are hereby charged towards the services of the said year as specified in the Schedule hereto with a further sum of two hundred and seventy thousand five hundred and forty-nine pounds two shillings and fifty-five cents in addition to the sums provided by the Appropriation Ordinance, 1928. Public Revenue charged.

Treasurer's
authority for
payment.

3. The payment by the Treasurer of the Colony out of the revenue and other funds of the Colony, for the several services specified in the Schedule, of the said sum of two hundred and seventy thousand five hundred and forty-nine pounds two shillings and fifty-five cents is hereby authorised.

SCHEDULE.

<i>No. of Head.</i>		£	Sh.	Cts.
I.	Public Debt Funded	177,496	5	74
III.	Pensions and Gratuities	13,001	0	39
IV.	His Excellency the Governor	1,788	10	83
IVa.	His Excellency the Governor Extraordinary	875	0	00
VIIIa.	Administration Extraordinary	854	8	91
XII.	Audit Department	826	8	40
XIV.	Registrar General's Department	27	1	89
XVIIIa.	Medical Department Extra- ordinary	2,584	2	28
XIXa.	Education Department Extra- ordinary	50	6	62
XXa.	Military Department Extra- ordinary	661	19	85
XXIa.	Post Office and Telegraphs Extraordinary	6,240	12	27
XXIIa.	Agricultural Department Extra- ordinary	22,380	18	74
XXIV.	Game Department	455	7	86
XXVI.	Government Coast Agency	1,881	19	49
XXVII.	Miscellaneous Services	41,424	19	28
		£270,549	2	55

1929

Explosives

No. XIII.

No. 13 OF 1929.

[31ST JULY, 1929.] Date of assent

**An Ordinance to Consolidate and Amend the Law
relating to the Manufacture, Storage, Sale,
Transport, Importation, Exportation, and
Use of Explosives.**

*By Notice.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Explosives Short title.
Ordinance, 1929,” and shall come into force on such date as
the Governor may, by notice in the Gazette, appoint.

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

“ Authorised explosive ” means any explosive named in
the Schedule to this Ordinance and any other explosive
which the Governor in Council may declare by notice in the
Gazette to be an authorised explosive ;

“ Blasting material ” means any explosive used for the
purpose of blasting ;

“ Danger building ” means any building or part thereof
used as an explosives factory or explosives magazine or in
connection therewith, unless in respect of that building or part
thereof a certificate has been granted in accordance with Rules
made under this Ordinance ;

“ Director ” means the Director of Public Works or any
other officer whom the Director may depute to exercise the
powers conferred upon the Director by this Ordinance ;

“ Explosives magazine ” means any building licensed
under this Ordinance for the storage of explosives ;

“ Explosives factory ” means any site licensed under this
Ordinance for the manufacture of any explosives, together with
every mound, building (including an explosives magazine), and
work thereon for whatsoever purpose used ;

“ Explosives ” means :—

- (a) gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those herein mentioned or not, which is used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect;
- (b) any fuse, rocket, detonator, cartridge, and every adaptation or preparation of an explosive as herein defined;
- (c) any other substance which the Governor in Council may from time to time by notice in the Gazette declare to be an explosive.

“ Inspector ”, unless otherwise qualified, means a chief inspector or an inspector of explosives, or any person deputed to act as an inspector under section 3 of this Ordinance.

“ Local authority ” means—

- (a) In the case of the municipality of Nairobi, the Nairobi Municipal Council constituted by the Local Government (Municipalities) Ordinance, 1928;
- (b) In the case of the municipality of Mombasa, or such portion thereof as the Governor may, by notice in the Gazette, declare to be under its jurisdiction for the purposes of this Ordinance, the Mombasa Municipal Board constituted by the Local Government (Municipalities) Ordinance, 1928;
- (c) In the case of any municipality hereafter established under the jurisdiction of a Municipal Council, the Municipal Council of such municipality as constituted under the provisions of the Local Government (Municipalities) Ordinance, 1928;
- (d) In the case of any other municipality or any part thereof, such person, body of persons, or authority as the Governor may, by notice in the Gazette, appoint to be the local authority for the purposes of this Ordinance;
- (e) In the case of any other area, the District Commissioner, or such person, body of persons, or authority as the Governor may, by notice in the Gazette, appoint to be the local authority for the purposes of this Ordinance.

“ Manufacture ” means the making and division of any explosive from or into its component parts by any process, the conversion of an explosive into an explosive of another kind, and the alteration, fitting for use, or repair of any explosive ;

“ Premises ” means any land, road, harbour, river, building, structure, ship, boat, or other vessel, or any part thereof, or any tent, railway truck, motor vehicle, cart, van, or other vehicle :

“ Rule ” means a Rule made and in force under this Ordinance ;

“ Unauthorised explosive ” means any explosive which is not an authorised explosive.

3. (1) The Governor may appoint a chief inspector of explosives, and such inspectors of explosives, and such other officers, as to him may seem necessary for carrying out the provisions of this Ordinance and shall notify all such appointments in the Gazette. Power of Governor to appoint Inspectors.

(2) The Director may depute other persons to act as inspectors in certain localities and for certain purposes ; and in so far as any such person is authorised so to act he shall have the same powers and be subject to the same duties as are conferred and imposed upon inspectors by this Ordinance.

MANUFACTURE OF EXPLOSIVES.

4. (1) No person shall manufacture any unauthorised explosive unless— Prohibition of manufacture of unauthorised explosives except in small quantities for chemical experiment.

(a) it be manufactured solely for the purposes of chemical experiment and not for sale, and in quantities not exceeding one pound in weight at any one time, or five pounds in all : or

(b) it be manufactured solely for practical trial as an explosive and not for sale, and in such quantities and under such conditions as may be in writing prescribed by an inspector.

(2) Any person who contravenes the provisions of this section or any condition prescribed under the powers thereof shall be liable on conviction to a fine not exceeding one hundred pounds, or, in default of payment, to imprisonment

of either description for a period not exceeding six months, and the explosive in respect of which the contravention has taken place shall be forfeited.

(3) The owner and the occupier of any premises in or on which an unauthorised explosive has been manufactured in contravention of this section shall be deemed to be the manufacturer, unless such owner or occupier (as the case may be) satisfy the court before which he is charged that he was unaware that any such contravention was occurring or had occurred.

(4) The burden of proving that any manufacture of an unauthorised explosive was solely for purposes of chemical experiment or practical trial and not for sale, shall, in any prosecution under this section, be upon the accused.

Prohibition of manufacture of authorised explosives except in licensed factories.

5. No person shall manufacture any authorized explosive in any place other than an explosives factory.

Any person who contravenes the provisions of this section shall be liable on conviction to a fine not exceeding one hundred pounds, or, in default of payment, to imprisonment of either description for a period not exceeding six months, and the explosive in respect of which any such contravention has taken place shall be forfeited.

STORAGE OF EXPLOSIVES.

Prohibition of storage or possession of unauthorised explosives save in accordance with section 4.

6. (1) No person shall keep, store, or be in possession of any unauthorised explosive—

- (a) unless it has been manufactured as provided by paragraph (a) of sub-section (1) of section 4 and does not exceed five pounds in weight; or
- (b) unless it has been manufactured as provided by paragraph (b) of sub-section (1) of section 4 and is kept stored or possessed in such manner and such quantities as have been approved in writing by an inspector.

(2) The provisions of sub-sections (2), (3), and (4) of section 4 shall apply *mutatis mutandis* in the event of any contravention of this section or of any of the conditions prescribed thereunder.

7. (1) No person shall keep, store, or be in possession of any authorised explosive in or on any premises—

Prohibition of storage of authorised explosives except in licensed premises.

- (a) except in an explosives factory or explosives magazine ; or
- (b) unless the explosive be kept for private use, and not for sale or other disposal, and in accordance with Rules ; or
- (c) unless the explosive be kept for use in the construction of any railway, road, or other public work, in quantities not exceeding five thousand pounds in weight and be stored in a temporary magazine approved by an inspector and under conditions prescribed in writing by an inspector ; or
- (d) unless the explosive be kept in quantities not exceeding one thousand pounds in weight, and be stored in an isolated place approved by an inspector and under conditions prescribed in writing by an inspector ; or
- (e) unless the explosive be kept by a person in possession of a licence, as provided in section 8, to deal in explosives, and in accordance with any conditions attached to that licence or prescribed by Rules.

(2) Any person who contravenes the provisions of this section or any condition prescribed thereunder or mentioned therein, shall be liable on conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding three months, and the explosive in respect of which the contravention has taken place shall be forfeited.

(3) The owner and the occupier of any premises in, at, or on which any contravention of this section has occurred shall be liable to the penalties prescribed for any such contravention, unless such owner or occupier (as the case may be) satisfy the court before which he is charged that he was unaware that any such contravention was occurring or had occurred.

LICENSED DEALERS IN EXPLOSIVES.

8. No person, other than the manufacturer, shall sell, deal in, or dispose of, any explosive unless he be in possession of a licence granted under this Ordinance.

Licence necessary to deal in explosives.

There shall be payable for every such licence a fee of fifty shillings.

For the purposes of this section, a mine manager, who in outlying districts and in accordance with Rules supplies other consumers, shall not be deemed to be a dealer, unless he sells at a profit.

IMPORTATION, EXPORTATION AND USE OF EXPLOSIVES.

No importation
or exportation
of explosives
without permit.

9. No person shall import into or export from the Colony, or cause to be imported thereto or exported therefrom, any explosive, unless he has obtained a permit issued, in the case of blasting materials, under the authority of an inspector, or, in the case of other explosives, by any person authorised by the Director to issue such a permit.

Prohibition of
use of blasting
materials
without permit.

10. No person shall use or cause to be used blasting materials, unless—

- (a) he be in possession of a permit issued under the authority of an inspector, or of a magistrate, justice of the peace, or of a person deputed to act as prescribed by section 3; or
- (b) he be under the immediate supervision of a person who has such a permit.

There shall be payable for every such permit a fee of ten shillings.

No such permit shall be issued unless the issuing authority be satisfied that the applicant may be safely entrusted with the use of blasting materials, and that there is necessity for his using the same.

Penalties.

11. Any person who contravenes the provisions of section 8, 9, or 10 shall be liable on conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding three months.

LICENSING OF FACTORIES AND EXPLOSIVES MAGAZINES.

12. The licence of any factory or magazine which is in force at the commencement of this Ordinance shall continue to be valid, provided that the conditions under which the licence was granted are still applicable.

Owners and occupiers of existing factories entitled to a licence.

13. (1) Every person who desires to establish or erect any factory for the manufacture of explosives shall make application in writing to the Director accompanied by a draft licence together with diagrams or plans of the proposed factory, on such scale or scales as the Director may prescribe, and the application shall set forth and specify—

Particulars to be stated on application.

- (a) the situation and extent or area of the land on which it is proposed to erect the factory, together with the area of land surrounding the same which it is proposed to leave free of buildings;
- (b) the several distances which it is proposed to maintain between the several danger buildings respectively, and between those danger buildings and other buildings or works used in connection with the factory;
- (c) the materials to be used in, and the mode of construction of, all danger buildings and works on, in, or used in connection with the factory;
- (d) the nature of the processes of manufacture to be used in the factory, the place at which each process of manufacture and every description of work is intended to be carried on in the factory, and the places on or in which it is proposed to keep in store any ingredients of explosives or other articles liable to spontaneous ignition or combustion or otherwise dangerous;
- (e) the quantity of explosives or of any partly or wholly mixed ingredients thereof, which it is proposed to use simultaneously in or near any building or in or near any machine;
- (f) the maximum number of persons which it is proposed to employ in each danger building in the factory, and whether those persons are Europeans, Indians or Natives;

- (g) any further particulars which the Director may require, having regard to any special circumstances arising from the locality or construction of any buildings or works, or to the nature of any process to be carried on therein.

(2) The Director may refuse any such application or direct that a public inquiry be held, as in the next succeeding section is provided, as to the expediency of granting the application.

Notice of inquiry into expediency of granting licence and objections to such grant.

14. (1) In the event of the Director directing that such an inquiry as aforesaid be held, he shall cause a notice to be published at the cost of the applicant, stating that application has been made under this Ordinance for the grant of a licence to erect a factory for the manufacture of explosives, describing as far as possible the proposed site of the factory, and stating that a commission will sit to hear any objections to the grant of such a licence, and the date, time, and place on or at which that commission will sit to hear the application.

(2) The said notice shall be published once a week, during three consecutive weeks, in the Gazette and in one or more newspapers circulating in the district in which it is proposed to erect or establish the factory and the commission shall not sit till the expiration of at least one week from any last publication of the notice.

(3) The local authority having jurisdiction in an area in which, or within one mile of which, is situate the site of the proposed factory, and any person residing or carrying on business within a like distance, or any person who can show a substantial interest in opposing the grant of a licence, may, either individually or jointly with others, lodge an objection in writing to the grant of any such licence with the chairman of the commission not later than seven days prior to the sitting of the commission.

(4) Every applicant for a licence or objector thereto may appear before the commission in support of his application or objection, either in person or by a deputy authorised thereto in writing by the applicant or objector.

Constitution, powers and duties of the commission.

15. The commission shall consist of an inspector (who shall be the chairman of the commission) and two other persons appointed for the purpose by the Director, and it shall, as soon as may be after the conclusion of its sitting, make a report to the Director, with such recommendations as it may think fit.

16. Upon consideration of the report and recommendations of the commission the Director may refuse the application for a licence, or may grant the application with or without modifications and conditions.

Powers of Director to grant or refuse licence on consideration of the report of the commission.
Issue of licence by Director.

17. Any licence under this Ordinance to erect, establish, and maintain a factory for the manufacture of explosives shall, if granted, be issued by the Director on payment of a sum of five pounds : Provided that no explosive shall be manufactured until the chief inspector of explosives is satisfied that the premises in respect of which the licence has been granted are in a sufficiently complete state to enable the provisions of this Ordinance and the Rules to be carried out and complied with in all respects.

18. Any such licence or the conditions thereof may, upon application, be amended by the Director, who shall not consent to the amendment except upon a report by an inspector that the safety of the public or of any person employed in or at the licensed factory will not be thereby diminished : Provided that no such amendment shall be inconsistent with the provisions of this Ordinance or of any Rule.

Amendment of licence by Director.

A fee of ten shillings shall be payable on every occasion that a licence is amended under this section.

19. Any such licence may be transferred into the name of another : Provided that four weeks' notice in writing of a desire to transfer shall be sent to the Director, who shall not refuse such a transfer except on the ground that the proposed transferee is not a suitable person to hold such a licence.

Transfer of licence by Director.

20. The Director may revoke any such licence. Every such licence shall *ipso facto* expire if the holder thereof has ceased to carry on, for a period of one year, any work authorised by the licence, and shall become void if the premises in respect of which the licence was granted have been used for any trade or work not authorised by the licence.

Revocation of licence by Director and lapse of same

21. Any person who contravenes or fails to comply with any condition upon which any such licence was granted shall be liable on conviction to a fine not exceeding two hundred and fifty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding twelve months.

Penalties for contravention of conditions of licence.

Permission to
erect or use
explosives
magazine.

22. (1) Any person desiring to erect or carry on a magazine for the storage of explosives shall make application for a licence for the same to an inspector, who may grant such a licence, subject to the observance of the Rules and after consultation with the local authority, if any, and upon such other conditions as he may think fit to attach to the licence.

(2) Any person who contravenes any condition of a licence granted under this section shall be liable on conviction to the penalties mentioned in the last preceding section.

(3) The provisions of sections 18, 19 and 20 shall *mutatis mutandis* apply in respect of any licence granted under this section.

(4) A fee of five pounds shall be payable for any licence granted under this section.

POWERS OF INSPECTORS.

Powers of
inspectors to
enter and
inspect
factories and
other premises
where
explosives are
stored or
suspected of
being stored.

23. It shall be lawful for any inspector—

- (a) to enter any explosives factory or explosives magazine at any hour of the day or night for the purpose of inspecting the same and of making inquiries relative to the compliance with the provisions of this Ordinance and the Rules, or relative to the means used therein for preserving the safety of the public or of any person employed therein;
- (b) to enter at any hour of the day or night upon any premises in which explosives are kept, or in which there is good reason to suspect that explosives are being manufactured or stored or kept or conveyed in contravention of the provisions of this Ordinance or the Rules, and to inspect any such premises and to make all such inquiries thereon as he may think fit;
- (c) to require the occupier or other person for the time being in charge of any explosives factory, explosives magazine, or other premises in this section mentioned, to furnish for purposes of analysis or test, samples of explosives or ingredients of explosives or any substance found therein or suspected of being an explosive or an ingredient of an explosive :

Provided that no such powers as are conferred by this section shall be so exercised as unnecessarily to hinder the work carried on in any such factory, magazine or premises aforesaid.

24. Any person who wilfully obstructs or hinders any inspector in the exercise of the powers or duties conferred or imposed upon him by this Ordinance or the Rules or disobeys any lawful order of an inspector, or who upon demand fails to answer as far as he may be able any question lawfully put by an inspector, or who gives false information to an inspector, whether in answer to any such question or not, shall be liable on conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding three months.

Penalties for obstructing inspector or refusing to answer inquiries, etc.

25. If upon any such inspection an inspector discover that any method of work, packing, or storage is being used which is in conflict with the provisions of this Ordinance or of any Rules, or which, in his opinion, is calculated to endanger the safety of the public or of any person employed in the premises inspected, he may require the immediate discontinuance of that method :

Power of inspector to order discontinuance of dangerous methods subject to appeal in accordance with Rules.

Provided that any person who is dissatisfied with a decision that a method is calculated to endanger safety, may, within fourteen days thereof, lodge an appeal as provided by Rules.

26. (1) Every occupier of a factory shall, subject to the approval of the chief inspector of explosives, make special Rules, not inconsistent with this Ordinance, for regulating the persons employed in that factory with a view to securing the observance therein of the provisions of this Ordinance and the Rules, the safety and proper discipline of all such persons, and the safety of the public.

Duty of occupier of a factory to make special Rules.

(2) The occupier of any explosives magazine or of any premises where explosives are dealt in, shall, if it seem to an inspector to be necessary, make such special Rules, not inconsistent with this Ordinance, as are described in subsection (1).

(3) The occupier of any such factory, magazine, or premises shall take all reasonable steps for ensuring or enforcing the observance of any such special Rules.

In respect of penalties any special Rules made under this section shall be deemed to be Rules under this Ordinance.

Penalties for endangering safety or causing loss of life.

27. (1) Any person causing an explosion whereby life or property is endangered shall be guilty of an offence and shall be liable to the following penalties, according as the explosion was negligently or wilfully caused; that is to say—

- (a) if the explosion be negligently caused and property be endangered, he shall be liable, on conviction, to a fine not exceeding two hundred and fifty pounds, or, in default of payment, to imprisonment of either description for a term not exceeding twelve months, or to both such fine and imprisonment;
- (b) if the explosion be negligently caused and life be endangered, he shall be liable, on conviction, to a fine not exceeding five hundred pounds, or, in default of payment, to imprisonment of either description for a term not exceeding twelve months, or to both such fine and imprisonment;
- (c) if the act or omission causing the danger to life or property be wilful, the maximum penalty hereinbefore mentioned in this section shall, if death do not result therefrom, be twelve years' rigorous imprisonment without the option of a fine;
- (d) if the explosion be negligently caused and death results, he shall be liable, on conviction, to a fine not exceeding one thousand pounds, or, in default of payment, to imprisonment of either description for a term not exceeding two years, or to both such fine and imprisonment.

(2) Nothing in this section contained shall be construed as exempting any person from being charged and punished under the Penal Code or any other Ordinance or applied Act in respect of any such act or omission as is described in this section.

Rules.

28. The Governor in Council may make Rules as to all or any of the following matters, namely :—

- (a) the construction of explosives factories, explosives magazines, and other danger buildings;
- (b) the conditions under which the manufacture of explosives may be carried on;
- (c) the storage of explosives, whether in explosives magazines or elsewhere;
- (d) the use of explosives;

- (e) the packing, transport, importation and exportation of explosives, and the making of special Rules governing the packing and transport at individual places, and the landing and handling of explosives in ports and harbours;
 - (f) the issue of licences to dealers in explosives, the conditions of any such licence, the restrictions which may be placed upon the sale or disposal of explosives to particular classes of persons, and the quantity of any explosive which may be purchased by any person or company under permit from the officer authorised by such Rules;
 - (g) the inquiry into the circumstances of explosions endangering or causing injury to persons or property or death, and for the giving of notice of all such explosions;
 - (h) the prevention of trespass in or upon an explosives factory, or in or upon any explosives magazine or other place where explosives are kept;
 - (i) the tests to which explosives, or the raw materials from which explosives are manufactured, are liable to be submitted;
 - (j) the manner in which appeals under section 25 shall be notified and conducted;
 - (k) prescribing the statistics which manufacturers and dealers may be called upon to supply,
- and generally for the protection of life and property and for the better carrying out of the objects and purposes of this Ordinance.

Any such Rules may provide penalties for the contravention thereof or failure to comply therewith not exceeding in any case a fine of one hundred and fifty pounds, or, in default of payment, imprisonment of either description for a term of twelve months, and the Rules may further provide that the explosive, if any, in respect of which the contravention or non-compliance has taken place may be forfeited.

The Rules may prescribe daily penalties for a continuing contravention or non-compliance or increased penalties for a second or subsequent contravention or non-compliance. Different Rules may be made in respect of different provinces, districts or areas of the Colony.

Saving clause.

29. Nothing in this Ordinance shall apply—

- (a) to the importation, storage, use or transport, of any explosive, by His Majesty's Regular Naval, Military or Air Forces, or by any Defence Force, Volunteer Force, or Police Force, constituted under any law ;
- (b) to any ammunition, a licence to possess or to deal in which is regulated by any other law ;
- (c) to the use or storage underground of any explosive at any mine as defined by the law for the time being in force regulating mines, works and machinery ;
- (d) to the possession or conveyance of any explosive taken as a sample for the purpose of this Ordinance by an inspector or other duly authorised person : Provided that the quantity be not more than is reasonably necessary for the performance of his duty and every such sample be kept and conveyed with all due precaution ;
- (e) to the keeping for sale of fireworks, in such quantities and subject to such conditions as may be prescribed by Rules.

Repeal.

30. The Indian Explosives Act, 1884, shall cease to apply to the Colony.

SCHEDULE.

AUTHORISED EXPLOSIVES.

The undermentioned explosives are declared to be authorised explosives under this Ordinance :—

Gelatinous explosives (such as blasting gelatine, gelignite, gelatine dynamite, etc.).

Non-Gelatinous explosives (such as dynamite, ligdyn, farmers' dynamite, etc.)

Nitro-cotton.

Detonators.

Safety fuse.

Fuse igniters or tshisa sticks.

Gunpowder.

Sporting powder.

Ammunition of various kinds (cartridges).

Percussion caps.

Fireworks of various kinds.

Provided that imported explosives, whether contained in the above list or not, shall be deemed to be authorised explosives, if included in and conforming to the " authorised list " in force in Great Britain.

No. 14 OF 1929.

Date of assent.

[31ST JULY, 1929.]

An Ordinance to Amend the Civil Procedure Ordinance, 1924.Date of
commencement.

31st July, 1929.

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 Civil Procedure (Amendment) Ordinance, 1929,” and shall be read as one with the Civil Procedure Ordinance, 1924, hereinafter referred to as “ the Principal Ordinance.”

Judgment
and decree.

2. Section 25 of the Principal Ordinance, as amended by the Civil Procedure (Amendment) Ordinance, 1925, is hereby repealed and the following section is substituted therefor :—

“ 25. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow :

Provided that in the following cases it shall not be necessary for the Court to hear the case before pronouncing judgment :—

(1) Where the plaint is drawn claiming a liquidated demand, and either—

- (a) the defendant has not entered such appearance as may be prescribed ; or
- (b) the defendant, having entered such appearance, has failed to file a defence within the time prescribed.

(2) In such cases as may be prescribed under section 83 (2) (f).”

Amendment of
section 40 (3)
of the
Principal
Ordinance.

3. Sub-section (3) of section 40 of the Principal Ordinance is hereby amended by the deletion of the word “ shall ” in the third line thereof and the substitution therefor of the word “ may.”

4. Section 87 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Procedure
relating to
arrest and
attachment.

“ 87. (1) Where an application is made to a subordinate Court that any person shall be arrested or that any property shall be attached under any provision of this Ordinance, and where such person resides or is found, or such property is situate, outside the local limits of the jurisdiction of the Court to which the application is made, the Court may in its discretion issue a warrant of arrest, or make an order of attachment, and send to the magistrate of the subordinate Court within the local limits of whose jurisdiction such person resides or is found or such property is situate the warrant or order together with the probable amount of the costs of the arrest or attachment.

(2) On the issue of such warrant or order the magistrate of the subordinate Court within whose jurisdiction the person to be arrested resides or is found or the property to be attached is situate, as the case may be, shall have power—

(a) to endorse and execute such warrant or order; or

(b) to issue, before such endorsement, a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under such provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced and endorsed within such time as may seem reasonable.

(3) The Court ordering an arrest under sub-section (2) shall upon receipt of the original warrant send the person arrested to the Court by which the original warrant was issued, unless such person shows cause to the satisfaction of the former Court why he should not be so sent, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be or may have been passed against him by that Court, in

either of which cases the Court making the arrest shall release him and shall inform the Court by which the original warrant was issued accordingly.

(4) Where an application is made to a judge of the Supreme Court that any person shall be arrested or that any property shall be attached under any provision of this Ordinance, and where owing to distance or for other sufficient cause the warrant or order cannot be immediately executed, it shall be competent for another judge of the Supreme Court to issue a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued : Provided that a person arrested or property attached under such provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced within such time as may seem reasonable.

(5) The judge issuing a provisional warrant under sub-section (4) shall send the person arrested to such place as may be specified in the original warrant unless such person shows cause why he should not be so sent, or unless he furnishes sufficient security for his appearance at such place as aforesaid or for satisfying any decree that may be or may have been passed against him, in either of which cases the judge ordering the arrest shall release him and shall inform the judge by whom the original warrant was issued accordingly."

No 15 OF 1929.

[31ST JULY, 1929.] Date of assent

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

31st July, 1929.

Date of commencement.

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

1. This Ordinance may be cited as “ the Local Government (Municipalities) Amendment Ordinance, 1929,” and shall be read as one with the Local Government (Municipalities) Ordinance, 1928, hereinafter called “ the Principal Ordinance.” Short title.

2. Section 5 of the Principal Ordinance is hereby amended by the addition thereto of the following further proviso :— Further proviso added to section 5 of the Principal Ordinance.

“ Provided also that if at any time no person or an insufficient number of persons shall accept nomination under paragraph (2) of this section, or if all or any of the persons nominated by the Governor under paragraph (2) of this section shall resign after having accepted such nomination and no qualified persons shall accept nomination in their stead or if all or any of the persons referred to in paragraph (2) of this section, having been elected, shall refuse to serve on the Council, the Council shall nevertheless be deemed to be duly constituted under this Ordinance, but in such case the Governor may, if he shall deem it desirable so to do, nominate such number of other fit and proper persons not exceeding seven, as he shall think fit, to be members of the Council. All members so nominated shall be nominated for such period not exceeding three years as the Governor may decide.

3. Section 9 of the Principal Ordinance is hereby amended by the addition thereto of the following further proviso :— Further proviso added to section 9 of the Principal Ordinance.

“ Provided further that if at any time no person or an insufficient number of persons shall accept nomination under paragraph (3) of this section, or if all or any

of the persons nominated by the Governor under paragraph (3) of this section shall resign after having accepted such nomination, and no qualified persons shall accept nomination in their stead, or if all or any of the persons referred to in paragraph (3) of this section, having been elected, refuse to serve on the Board, the Board shall nevertheless be deemed to be duly constituted under this Ordinance, but in such case, the Governor may, if he shall deem it desirable so to do, nominate such number of other fit and proper persons not exceeding seven, as he shall think fit, to be members of the Board. All members so nominated shall be nominated for such period not exceeding three years as the Governor may decide.

Deletion of
section 13 (2)
of the
Principal
Ordinance.

4. Sub-section (2) of section 13 of the Principal Ordinance is hereby repealed.

Additional
paragraph
added to
section 15 of
the Principal
Ordinance.

5. Section 15 of the Principal Ordinance is hereby amended by the insertion of the following paragraph, to be numbered (h.1.) between paragraphs (h) and (i) :—

“ (h.1.) for providing for the filling of vacancies by nomination in the event of failure to fill such vacancies by election ”.

Amendment
of section 115
of the
Principal
Ordinance.

6. Section 115 of the Principal Ordinance is hereby amended by the insertion after the word “ by-law ” in line 2 thereof of the following words (which shall be deemed to have been so inserted on the first day of January, 1929) :—

“ thereunder or of any rule for the time being in force under section 127 of this Ordinance ”.

1929

Local Government (District Councils)

No. XVI

No. 16 OF 1929.

[31ST JULY, 1929.] Date of assent.

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

31st July, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Local Govern- Short title.
ment (District Councils) Amendment Ordinance, 1929 ”, and
shall be read as one with the Local Government (District
Councils) Ordinance, 1928, hereinafter called “ the Principal
Ordinance ”.

2. Section 6 (1) (a) of the Principal Ordinance is hereby Amendment of
amended by the addition thereto at the end thereof of the section 6 of
following words :— Principal
Ordinance.

“ but if, at any time, no person shall stand for election by
virtue of this proviso or if, having been elected, the mem-
ber so elected shall resign or shall refuse to serve on the
Council, and no other person shall stand for election, the
Council shall nevertheless be deemed to be duly constituted
under this Ordinance, but in such case the Governor may,
if he shall deem it desirable so to do, nominate a fit and
proper person to be a member of the Council in the place
of such elected member.”

3. Section 13 of the Principal Ordinance is hereby re- Repeal and
pealed and the following is substituted therefor :— replacement
of section 13
of Principal
Ordinance.

“ 13. Every person who is enrolled in any voters’
roll in respect of a property qualification shall be enrolled
in the ward in which such property is situate, and shall be
entitled to be enrolled once in each ward in respect of

which he is so qualified ; and every person who is enrolled in respect of a residential qualification shall be enrolled in the ward in which he resides :

“ Provided that no person shall be enrolled in the same ward in respect of both a property and a residential qualification.”

Amendment of
section 17 of
Principal
Ordinance.

4. Section 17 of the Principal Ordinance is hereby amended by the addition at the end thereof of the following proviso :—

“ Provided that no person shall be enrolled under this section as a voter upon an application made after the date of publication of a notice of any election under section 26 of this Ordinance until such election shall have been held.”

Repeal and
replacement of
section 31 (1)
of Principal
Ordinance.

5. Sub-section (1) of section 31 of the Principal Ordinance is hereby repealed and the following is substituted therefor :—

“ 31. (1) A registered voter shall be entitled to one vote in respect of each vacancy to be filled for the ward or wards in which he is enrolled.”

Amendment of
section 32 of
Principal
Ordinance.

6. Section 32 of the Principal Ordinance is hereby amended by the addition thereto of the following new paragraph (c) (1) :—

“ (c) (1) For providing for the filling of vacancies by nomination in the event of failure to fill such vacancies by election.”

1929

Weights and Measures

No. XVII

No. 17 OF 1929.

[31ST JULY, 1929.] Date of assent.

**An Ordinance to Amend the Weights and
Measures Ordinance.**

31st July, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Weights and Measures (Amendment) Ordinance, 1929 ”, and shall be read as one with the Weights and Measures Ordinance (Chapter 96 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance ”.

Short title.

2. Section 3 of the Principal Ordinance is hereby amended as follows :—

Amendment of
section 3 of
the Principal
Ordinance.

(1) By the deletion of the definition of the term
“ weighing instrument ”;

(2) By the insertion of the following definitions :—

“ The term “ weighing instrument ” includes scales, balances and every kind of instrument for weighing and instruments constructed to calculate and indicate the prices in money, together with all weights and counterpoises belonging thereto :

Wherever the term “ weighing instrument ” appears in the Principal Ordinance it shall unless inconsistent with the context include also a measuring instrument.

The term “ measuring instrument ” includes every instrument for the measurement of number, length, capacity, volume or area ;

The term “ error ” in reference to a weighing instrument includes deficiency in sensitiveness.”

Penalty on use
or possession of
unauthorised
weight,
measure,
weighing or
measuring
instrument.

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

“ 19. Every person who uses or has in his possession for use for trade a weight or measure which is not of the denomination of some weight or measure authorised by this Ordinance for such use, or a weighing or measuring instrument not constructed to indicate in terms of some weight or measure so authorised, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten pounds, or in the case of a second offence, fifteen pounds, and the weight or measure or weighing or measuring instrument shall be liable to be forfeited ”.

Amendment of
section 28 of
the Principal
Ordinance.

4. Section 28 of the Principal Ordinance is hereby amended by the addition of the words “ or measure ” after the word “ weight ” in line 12.

Amendment of
section 29 of
the Principal
Ordinance.

5. Section 29 of the Principal Ordinance is hereby amended by the deletion of the word “ weighing-machine ” and substitution therefor of the words “ weighing or measuring instrument ”.

Examination
and verification
of weights and
measures,
weighing
and measuring
instruments.

6. Section 33 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

“ 33. (1) The inspector shall cause such secondary standards as he may think requisite to be delivered to the deputy inspectors, and every deputy inspector may, in accordance with Rules, call upon all persons having any weights, measures, weighing or measuring instruments for use for trade within his inspectoral district to produce the same for the purpose of their being examined, verified, stamped or re-stamped at such time and place within that district as he may appoint. Every inspector shall publish a notice in the Gazette and in a newspaper circulating in his district, stating the time and place so appointed, such time not being earlier than fourteen days after the publication of the notice.

(2) Where a weight, measure, weighing or measuring instrument, by reason of its being permanently fixed or of heavy weight or delicate construction cannot be conveniently moved it shall be sufficient for the purposes of this section if the person who has the same for use for trade

notifies in writing its position to the deputy inspector or other officer authorised by the inspector to receive such notifications.

(3) When a measure of capacity made of glass, earthenware or enamelled metal has been stamped it shall not be necessary to produce such measure, provided that the original stamp is not defaced or become illegible and the measure has not been chipped or cracked.

(4) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten pounds."

7. Section 34 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Comparison
with standards
of same
denomination.

" 34. (1) An inspector shall attend with the secondary standards and weighing and measuring instruments in his custody at the time and place notified under sub-section (1) of the last preceding section and, upon payment of the prescribed fee, shall there examine every weight, measure, weighing and measuring instrument brought or submitted to him which is of a denomination authorised by this Ordinance and shall test or compare them with such secondary standards, and if he shall find any such weight, measure, weighing or measuring instrument correct he shall stamp it with a stamp of verification in the manner prescribed by Rules.

(2) Where due notification has been given under sub-section (2) of the last preceding section and upon payment of the prescribed fee an inspector shall attend at the place notified and shall test or examine and stamp any weight, measure, weighing or measuring instrument so notified in the same manner as if such weight, measure, weighing or measuring instrument had been brought or submitted to him."

8. Section 51 of the Principal Ordinance is hereby repealed and the following section substituted therefor :—

Power to
make Rules.

" 51. The Governor in Council may make Rules prescribing—

- (1) a table of fees to be taken by the inspector in respect of—
 - (a) the examination of weights, measures, weighing and measuring instruments;
 - (b) the stamping of weights, measures, weighing and measuring instruments; and
 - (c) the adjusting of weights, measures, weighing and measuring instruments;
- (2) standards of weight and measure of denominations other than those prescribed by this Ordinance;
- (3) penalties, not exceeding a fine of fifteen pounds, for the breach or attempted breach of any Rule;
- (4) general Rules relating to—
 - (a) the examination, verification and stamping of weights, measures, weighing and measuring instruments, including the prohibition of a stamping in cases where the nature, condition, denomination, material or principal of construction of the weight, measure or instrument appears likely to facilitate the perpetration of fraud;
 - (b) the circumstances and conditions under which, and the manner in which stamps may be obliterated or defaced;
 - (c) the tests to be applied for the purpose of ascertaining the accuracy and efficiency of weights, measures, weighing and measuring instruments;
 - (d) the limits of error to be allowed on verification and to be tolerated on inspection either generally or in respect of any trade or trades;
 - (e) the articles to be sold by weight only or measure only or net weight only;

- (f) the manner of marking the weight or measure or net weight of articles sold in made-up packages or vessels on such packages or vessels;
- (g) the prohibition of the import of made-up packages or vessels into the Colony for sale within the Colony which do not comply with the requirements of the Rules;
- (h) generally for the better carrying into effect of any of the provisions of this Ordinance."

9. The Governor in Council may make Rules, with regard to the examination, verification and stamping of weights, measures, weighing or measuring instruments which are used by the departments of the Government, the Kenya and Uganda Railways and Harbours and any local authority for the purpose of, or in connection with, the fixing of tolls, rates, taxes or payments of any description.

Examination, verification and stamping of weights, etc., of Government Departments.

For the purpose of this section "local authority" means a local authority as defined by the Public Health Ordinance.

Cap. 124.

10. Any person who by means of words, description, advertisement or other indication, whether direct or indirect, makes any false, incorrect or untrue statement as to the number, gauge, weight, measure or quantity of any goods or things in any trade dealing 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 term not exceeding one year or to both such fine and imprisonment.

Misrepresentation of weight, etc., an offence.

11. Schedule B to the Principal Ordinance is hereby repealed and the following Schedule substituted therefor:—

Amendment of Schedule B of the Principal Ordinance.

SCHEDULE B.

(See Section 6.)

TROY WEIGHTS.

Denominations.	Parts or multiples of a pound avoirdupois.
Ounce Troy	$\frac{480}{7000}$

Amendment of
Schedule F
of the
Principal
Ordinance.

12. Schedule F to the Principal Ordinance is hereby repealed and the following Schedule substituted therefor:—

SCHEDULE F.

MEASURE OF LENGTH.

An Imperial standard yard, graduated into feet and inches throughout, the end inches being divided into eighths, tenths and twelfths of an inch respectively.

MEASURES OF AVOIRDUPOIS WEIGHT.

Fifty-six pounds or half a hundredweight.
Fifty pounds, or half a cental.
Twenty-eight pounds or a quarter.
Twenty pounds.
Fourteen pounds or a stone.
Ten pounds.
Seven pounds.
Five pounds.
Four pounds.
Two pounds.
One pound.
Half a pound.
One fourth of a pound.
Two ounces.
One ounce.
Half an ounce.
One fourth of an ounce.
Two drams.
One dram.
Half a dram.

MEASURES OF CAPACITY.

A bushel.
Half a bushel.
A peck.
A gallon.
Half a gallon.
A quart.
A pint.
Half a pint.
One fourth of a pint.
Half a gill.
One quarter of a gill.

1929

Central Roads and Traffic Board

No. XVIII

No. 18 OF 1929.

[31ST JULY, 1929.] Date of assent.

**An Ordinance to Provide for the Establishment
of a Central Roads and Traffic Board.**

BY PROCLAMATION.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Central Roads and Traffic Board Ordinance, 1929 ”, and shall come into operation upon such date as the Governor may by proclamation in the Gazette appoint. Short title
and com-
mencement.

2. (1) There shall be established a Central Roads and Traffic Board (hereinafter referred to as “ the Board ”) which shall consist of :— Establishment
of Central
Roads and
Traffic Board.

- (a) The Colonial Secretary as Chairman;
- (b) The Commissioner for Local Government as Deputy Chairman;
- (c) The Chief Native Commissioner;
- (d) The General Manager, Kenya and Uganda Railways and Harbours;
- (e) The Director of Public Works;
- (f) And such other persons, not being less than four, as the Governor may from time to time appoint :

Provided that in the case of absence or inability to attend any of the officers included under paragraphs (c), (d) and (e) above may be represented by a deputy, and such deputy shall have the right to vote as if he were himself a member of the Board :

Provided further that the Governor may, when appointing any person included under (f) above, declare that in the case of his absence or inability to attend his place on the Board may

be taken by some other person to be named by the Governor and every such other person shall have the right to vote as if he were himself a member of the Board.

(2) In the absence from any meeting of both the Chairman and the Deputy Chairman the members present shall elect one of their number to preside at such meeting.

(3) The member presiding and four other members shall form a quorum.

(4) Questions before the Board shall be decided by a majority of votes of those present and voting, and, in the case of an equality of votes, the member presiding at the meeting shall have a second or casting vote.

Appointment
of Secretary
to the Board.

3. The Chairman of the Board may appoint a fit and proper person to act as Secretary to the Board and to perform such duties as may be assigned to him by the Board.

Powers and
duties of the
Board.

4. The powers and duties of the Board shall be as follows :—

- (a) To exercise all such powers and perform all such duties as are conferred or imposed, by any enactment for the time being in force, upon the Central Roads Board established under the Local Government (Municipalities) Ordinance, 1928, which said powers and duties are hereby conferred and imposed upon the Board established under section 2 of this Ordinance ;
 - (b) To exercise such of the powers of the Governor under the Traffic Ordinance, 1928, or under any other enactment relating to traffic for the time being in force, as the Governor may delegate to the Board ;
 - (c) To advise the Governor upon any matter or thing relating to the public roads of the Colony and the traffic thereon and the dedication of lines of public travel.
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1929

Malaria Prevention

No. XIX

No. 19 OF 1929.

[31ST JULY, 1929.] Date of assent.

An Ordinance to Enable Local Authorities to take Measures for the Prevention of Malaria within the Colony.

31st July, 1929.

Date of commencement.

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

1. This Ordinance may be cited as “ the Malaria Prevention Ordinance, 1929.” Short title.

2. In this Ordinance—

Interpretation.

“ Drain ” means any pipe or channel whether open or closed, used or intended to be used for the drainage of land ;

“ Land ” includes all buildings thereon ;

“ Local Authority ” means local authority as defined in the Public Health (Amendment) Ordinance, 1928.

“ Owner ” shall, as regards immovable property, include any person, other than His Majesty, receiving the rent or profits of any lands or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let, whether on his own account or as agent for any person, other than His Majesty, entitled thereto or interested therein. The term includes any lessee or licensee from the Crown, and any superintendent, overseer or manager of such lessee or licensee residing on the holding.

3. A local authority may for the purpose of prevention or suppression of malaria construct and maintain within the area subject to its control a system or systems of drainage for the removal of water from any land within the said area, and may level or adjust the surface of such land as part of such system or systems, and may readjust the boundaries, areas and shapes of any plot or holding affected.

Local authority may construct and maintain drainage systems.

Power of entry
upon land.

4. For the purpose of enabling the provisions of the last preceding section to be carried out, a local authority by its duly authorised agents or servants may enter upon any land upon which a system or systems of drainage is or are to be constructed, and may do thereon all such work as may be necessary for the construction of such system or systems of drainage as aforesaid, and may, at any time after the completion of the work, from time to time by its duly authorised servants or agents, enter upon the said land for the purpose of working, maintaining and keeping in good condition such system or systems of drainage as aforesaid. All drains constituting part of any such system or systems of drainage, shall be under the control of the local authority.

Dams, etc.,
not to be
built so as to
obstruct flow
of water.

5. No person shall, within any area subject to the control of a local authority, build or maintain any dam or other construction so as to obstruct the flow of water into or out of any drain under the control of the local authority, nor by any means alter the level of any water so as to reduce its flow as aforesaid, nor construct any steps, bridge or platform over any drain under the control of the local authority without the consent in writing of such local authority, and such local authority may cause any such dam or other construction, or any steps, bridge or platform so built or constructed (as the case may be) without such written consent as aforesaid to be demolished, altered, re-made or otherwise dealt with as it may think fit at the expense of the person building such dam or other construction or constructing such steps, bridge or platform, and any money becoming due from any person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

Trees, etc.,
not to be
planted with-
out consent of
local authority.

6. No person shall, within any area subject to the control of a local authority, plant trees or otherwise cultivate land in such a manner as is likely, in the opinion of such local authority, to obstruct the flow of water into or out of or in any drain, or culvert under the control of the said local authority, and the said local authority may, by notice in writing, require the removal of any tree or vegetation which is likely to cause such obstruction, and, in the event of the non-removal of such trees or vegetation within a time to be specified by the local authority, such local authority may cause any such trees or vegetation to be removed at the expense of the person planting or cultivating the same, and any money

becoming due from any person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

7. No person shall, without the written consent of a local authority, make or connect, or cause to be made or connected, any drain into any other drain or into any canal or stream under the control of the local authority, and a local authority may cause any such drain constructed without such written consent as aforesaid to be demolished, altered, re-made or otherwise dealt with as it may think fit at the expense of the person making or connecting such drain, and any money becoming due from such person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Drains not to be connected without consent of local authority.

Cap. 6.

8. Whenever it appears to a local authority that any land or any pond, tank, well, spring, drain, stream, waterlogged ground or swamp, irrigation canal, or other collection of water within the area under its control, is or is likely to be favourable to the existence or propagation of mosquitoes, the local authority may, by notice in writing, require the owner or occupier of the land within a reasonable time to be specified in such notice to comply with such requirements in regard to such land, pond, tank, well, spring, drain, stream, waterlogged ground or swamp, irrigation canal, or other collection of water as it may specify for the purpose of preventing or suppressing the existence or propagation of mosquitoes therein or thereupon, and if within the time specified in the said notice such owner or occupier of the land has not complied with the requirements thereof he shall be guilty of a contravention of this Ordinance and in such case the local authority may enter upon such land and may carry out or complete the required work thereon, and may recover the cost of carrying out or completing such work from the person in default, and all monies due from such person to the local authority under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Owner of land to do works in certain cases.

Cap. 6.

9. A local authority may require the owner of any land benefited by the construction or maintenance or both of any system or systems of drainage under section 3 of this Ordinance to contribute the whole or a portion of the cost of such construction or maintenance or both :

Contribution by owner of land towards cost of drainage.

Provided that the question as to whether or not the owner of any land is benefited by such construction or maintenance or both as aforesaid shall be decided by mutual agreement between the local authority and the owner of such land, and failing such agreement, then by reference to arbitration under the Arbitration Ordinance, and any sum of money awarded against the owner of the land under that Ordinance shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 18.

Cap. 6.

Provided further that the amount of any contribution towards such construction as aforesaid shall in no case exceed the difference between the selling value of such land prior to such construction as aforesaid and the selling value of such land after such construction as aforesaid :

Provided further that any contribution made under this section shall be in addition to and not in substitution for any other contribution that may be required by the local authority for any work or service under any law for the time being in force.

Owner to
pay to Local
Authority
value of area
increased by
readjustment.

10. If any plot or holding is increased in size by re-adjustment of boundaries under section 3 of this Ordinance, the owner of such plot or holding shall pay to the local authority the value of the area by which the said plot or holding is so increased; and all monies due from such person to the said local authority under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance :

Cap. 6.

Provided that the value of the area by which the said plot or holding is so increased shall be agreed upon between the owner of the said plot or holding and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Cap. 18.

Local
authority to
pay to owner
value of area
diminished
by readjust-
ment.

11. If any plot or holding is diminished in size by re-adjustment of boundaries under section 3 of this Ordinance, the owner of such plot or holding shall receive as compensation from the local authority the value of the area by which the said plot or holding is so diminished, and the amount of the compensation shall be agreed between the owner of the said plot or holding and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Cap. 18.

1929

Malaria Prevention

No. XIX

12. In the event of the owner of the land claiming compensation for any damage caused to his land by any action taken by the local authority in pursuance of the powers granted by this Ordinance, the amount of such compensation shall be agreed upon between the owner of the land and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Mode of
determining
compensation.

Cap. 18.

13. Any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any notice thereunder or who shall obstruct any person in the execution of his duty under this Ordinance shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds.

Penalty.

14. The powers and provisions contained in this Ordinance shall be in addition to and not in derogation of the powers and provisions contained in the Public Health Ordinance.

Saving of the
Public Health
Ordinance.
Cap. 124.

No. XX.*Stock and Produce Theft***1929**No. 20 OF 1929,

Date of assent.

[16TH NOVEMBER, 1929.]

An Ordinance to Amend the Stock and Produce Theft Ordinance.Date of
commencement.*16th November, 1929.*

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 Stock and Produce Theft (Amendment) Ordinance, 1929 ”, and shall be read as one with the Stock and Produce Theft Ordinance (Chapter 79 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance ”.

Amendment of
section 2 of
Principal
Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by the insertion in the definition of “ stock ” of the word “ camels ” between the words “ swine ” and “ or domesticated ostrich ”.

1929

British and Colonial Probates

No. XXI.

No. 21 OF 1929.

[16TH NOVEMBER, 1929.] Date of assent.

An Ordinance to Amend the British and Colonial Probates Ordinance.

16th November, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “the British and Colonial Probates (Amendment) Ordinance, 1929,” and shall be read as one with the British and Colonial Probates Ordinance (Chapter 12 of the Revised Edition), hereinafter referred to as “the Principal Ordinance”. Short title.

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

“3. The Governor may, on being satisfied that the legislature of any British possession or protectorate or of any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland or in any other part of His Majesty's Dominions has made, or is about to make, adequate provision for the recognition in that possession, or protectorate or territory as aforesaid of probates and letters of administration granted by the Supreme Court of this Colony, direct by order published in the Gazette that this Ordinance shall apply to that possession or protectorate or territory, and in the event of such provision not being made within a reasonable time, or if made, being so altered that it would not authorise the making of an order as aforesaid the Governor may, by order published in the Gazette, revoke any such order.”

3. Section 4 of the Principal Ordinance is hereby amended by the insertion of the words “or territory” immediately after the word “protectorate”. Amendment of section 4 of the Principal Ordinance.

4. Section 9 of the Principal Ordinance is hereby amended by the insertion of the words “or territory” immediately after the word “protectorate” in line 6 thereof. Amendment of section 9 of the Principal Ordinance.

5. The British and Colonial Probates (Amendment) Ordinance, 1928, is hereby repealed. Repeal of Ordinance No. 31 of 1928.

No 22 OF 1929.

Date of assent.

[16TH NOVEMBER, 1929.]

An Ordinance to Regulate the making of Loans to Local Authorities by the Government of the Colony, the repayment thereof, and matters incidental thereto.

Date of commencement.

16th November, 1929.

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

Short title.

1. This Ordinance may be cited as “ the Local Government (Loans) Ordinance, 1929 ”.

Interpretation.

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

No. 19 of 1928.

“ Local authority ” means a Municipal Council or Board established under the Local Government (Municipalities) Ordinance, 1928, or a District Council established under the

No. 21 of 1928.

Local Government (District Councils) Ordinance, 1928.

“ Loan ” means a loan which a local authority has been authorised to borrow under section 88 of the Local Government (Municipalities) Ordinance, 1928, or under section 109 of the Local Government (District Councils) Ordinance, 1928, or under any enactments amending or replacing the said sections.

Application of Ordinance.

3. (1) The provisions of this Ordinance shall apply to all loans granted to local authorities, after the coming into force of this Ordinance, out of moneys provided by the Government of the Colony.

(2) Any liability to the Government of the Colony lawfully assumed by any local authority for the purpose of acquiring from such Government any works, schemes, undertakings or assets, shall be deemed to be a loan granted under this Ordinance, and shall be subject to the provisions of this Ordinance.

(3) The provisions of sections 7, 10 and 11 only of this Ordinance shall apply to any loans to the Municipal Council of Nairobi which were, prior to the coming into force of this Ordinance, included in approved Colony loans.

PART I.

Loans.

4. (1) The Governor in Council may, out of such public **Loans.** revenues or other moneys as may from time to time be set aside or appropriated by the Government of the Colony for the purpose of loans to local authorities, grant loans to any local authority in respect of borrowing powers conferred upon such local authority by or in accordance with any law for the time being in force.

(2) Subject to the provisions of this Ordinance, any loans granted under this Ordinance shall be subject to the terms and conditions imposed by or in accordance with any such law as aforesaid :

Provided that the Governor in Council may, when granting any loan under this Ordinance, prescribe any additional terms and conditions to be observed by the local authority obtaining such loan.

5. Every application for a loan under this Ordinance shall be accompanied by detailed estimates of the cost of the works proposed to be undertaken, the annual cost of upkeep, the annual revenue derivable therefrom, the duration thereof, and such other information as may be required. **Applications for loans.**

6. In considering the propriety of granting a loan and in fixing the period of repayment thereof, the Governor in Council shall have regard to :— **Consideration of applications for loans.**

- (a) the local authority's debt then existing and the sufficiency of the security for its repayment;
- (b) whether the work for which the loan is intended would be of such benefit to the public as to justify a loan from Government funds;
- (c) the probable period of durability and continuing utility of the work proposed to be undertaken.

7. (1) Every loan granted under this Ordinance shall be repayable by such equal half-yearly instalments as will effect the extinction of the debt with interest thereon within a period not exceeding forty years : **Repayment of loans.**

Provided that interest accruing during the construction of any works for such period not exceeding three years as the Governor in Council may approve, may be charged against the loan and form part of it for the purposes of interest and redemption :

Provided, further, that in determining the period when payment of the half-yearly instalments shall commence, the Governor in Council shall have regard to the date on which the works to be carried out by means of such loans are to be completed, but such instalments shall in no case be deferred for a period in excess of three years from the date on which the first payment on account of the loan is made to the local authority.

PART II.

General Provisions.

Applications
to be submitted
through Com-
missioner
for Local
Government.

8. Every application for a loan under this Ordinance shall be submitted through the Commissioner for Local Government and shall be made in such form as he may prescribe.

Interest
on loans.

9. (1) Interest shall be payable on all loans granted under this Ordinance at such rates as the Governor in Council shall from time to time determine.

(2) Additional interest may be charged on overdue instalments of capital or on any overdue part of instalment, and on overdue interest in such manner and at such rates as the Governor in Council may determine.

Loan to be a
charge on
revenues and
assets.

10. Every loan granted under this Ordinance shall, subject to any prior charge or hypothecation, be a first charge upon the revenues and assets of the local authority obtaining such loan.

Provisions for
enforcing
payments.

11. (1) If any local authority, having the power to levy rates or impose and collect dues, shall neglect to pay any money due in respect of any loan granted under this Ordinance, the Governor in Council may, at any time after the expiry of sixty days from the date on which such money becomes due and payable, forthwith impose and levy a rate or rates of sufficient amount, and impose and recover any dues which may be imposed and recovered by the local authority.

(2) For the purposes of this section the Governor in Council shall have all the powers vested in the local authority for imposing, levying and recovering rates upon all rateable property within its jurisdiction and for imposing and recovering such dues as aforesaid.

(3) If, after payment out of the proceeds of any such rates or dues of the money due under this Ordinance together with the expenses of and incidental to the imposition, levying and recovering such rates and dues, there remains any balance, such balance shall be paid over to the local authority.

12. For the purposes of the last preceding section, any District Council established under the Local Government (District Councils) Ordinance, 1928, which has not carried out the preliminary procedure relating to the district rate laid down in section 73 of the said Ordinance, shall, nevertheless, be deemed to have power to levy rates, and whenever the Governor in Council shall exercise the powers conferred by the last preceding section for the recovery of any loan made to any such District Council, or interest thereon, he shall be entitled to adopt for that purpose any one of the methods of rating prescribed by section 73 of the said Ordinance as he may deem expedient :

Special
provisions re
District
Councils.

Provided, however, that before any loan shall be granted under this Ordinance to any District Council referred to in this section, such District Council shall, by a majority of not less than two-thirds of the elected members of such Council, pass a resolution to raise such loan :

Provided further, that before such District Council shall vote upon such resolution, at least sixty days notice shall be given at a meeting of such District Council of the proposal to raise such loan, and a copy of the proposed resolution shall be published in the Gazette and in one or more newspapers (if any) circulating within the District once a week for six consecutive weeks and shall also be exhibited in a conspicuous place at or near the public entrance to the offices of such District Council.

No. XXIII.

Stock Traders Licence

1929

No. 23 OF 1929.

Date of assent.

[16TH NOVEMBER, 1929.]

**An Ordinance to Amend the Stock Traders
Licence Ordinance.**

Date of
commencement.*16th November, 1929.*

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 Stock Traders
Licence (Amendment) Ordinance, 1929,” and shall be read as
one with the Stock Traders Licence Ordinance (Chapter 59 of
the Revised Edition), hereinafter referred to as “ the Principal
Ordinance.”

Issue of
licences and
fees payable
therefor.

2. Section 5 of the Principal Ordinance is hereby
repealed, and in lieu thereof shall be read the following :—

“ 5. (1) Licences under this Ordinance may be
obtained at the office of a resident commissioner or
district commissioner and shall be in such form as the
Governor may prescribe.

(2) A licence may be issued for one year or for half a
year. Every yearly licence shall continue in force from the
date of the issue thereof until the next following thirty-first
day of December, and every half-yearly licence shall
continue in force from the date of the issue thereof until
the next following thirtieth day of June or thirty-first day
of December, whichever shall first ensue.

(3) There shall be payable for a yearly licence the sum
of five pounds and for a half-yearly licence the sum of
two pounds ten shillings.”

1929

Local Government (Rating)

No. XXIV.

No. 24 OF 1929.

[16TH NOVEMBER, 1929.] Date of assent.

**An Ordinance to Amend the Local Government
(Rating) Ordinance, 1928.**

16th November, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Local Govern- Short title.
ment (Rating) (Amendment) Ordinance, 1929 ”, and shall be
read as one with the Local Government (Rating) Ordinance, No. 20 of 1928.
1928, hereinafter referred to as “ the Principal Ordinance ”.

2. Notwithstanding anything contained in the Principal Valuation Roll
Ordinance, the valuation roll of the unimproved value of as signed by
land signed and certified during the year 1929 by the President of Valuation
of the Valuation Court appointed by the Municipal Board of Court shall be
Mombasa on the 12th day of March, 1929 (hereinafter referred deemed to be
to as “ the Mombasa Valuation Roll ”) shall be deemed to be valuation roll
the valuation roll of rateable property in force within the for Mombasa.
Municipality of Mombasa excepting the area on the mainland
included within the boundaries of Mombasa Municipality as
defined in the Third Schedule to the Local Government No. 19 of 1928.
(Municipalities) Ordinance, 1928, and shall, subject to the
provisions of sub-section (1) of section 3 of the Principal
Ordinance, be fixed and binding upon all parties concerned :

Provided, however, that nothing in this Ordinance shall
absolve the President of such Valuation Court from the obliga-
tion to comply with the provisions of section 11 of the
Principal Ordinance, with respect to the Mombasa Valuation
Roll, or shall affect the right of any person to appeal from the
decision of such Valuation Court within the period specified
and in the manner provided in section 12 of the Principal
Ordinance.

Municipal
Board of
Mombasa to
cause
Valuation Roll
to be made
with addition
of valuation
improvements.

3. The Municipal Board of Mombasa shall, as soon as may be, cause a valuation of improvements to be made and added to the Mombasa Valuation Roll, and such roll with the addition of such valuation of improvements shall be deemed to be a valuation roll under the Principal Ordinance :

Provided that such valuation of improvements shall in all respects be dealt with in the same manner as if it were a new valuation roll made in accordance with section 3 of the Principal Ordinance.

No additional
rate exceeding
one-eighth per
cent. to be
imposed until
valuation of
improvements
is added.

4. Notwithstanding anything contained in the Principal Ordinance or in this Ordinance no additional rate or rates exceeding in any one financial year one-eighth of one per centum shall be imposed under sub-section (2) of section 15 of the Principal Ordinance until such time as a valuation of improvements has been added to the Mombasa Valuation Roll as provided in the last preceding section.

Replaced by The High Commission East
African Railways & Harbours Act, 1950
(No. 2 of 1950)

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1929

Kenya and Uganda Railway

No. XXV.

No. 25 OF 1929.

[16TH NOVEMBER, 1929.] Date of assent.

**An Ordinance to Amend the Kenya and Uganda
Railway Ordinance, 1927.**

16th November, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as " the Kenya and
Uganda Railway (Amendment) Ordinance, 1929 " and shall
be read as one with the Kenya and Uganda Railway
Ordinance, 1927, hereinafter referred to as " the Principal
Ordinance ". 15 of 1927.

2. Section 73 of the Principal Ordinance is hereby
repealed. Repeal of
section 73 of
the Principal
Ordinance.

No. XXVI.*Kerosene Oil (Repayment of Duty)* **1929**

No. 26 OF 1929.

Date of assent.

[16TH NOVEMBER, 1929.]

**An Ordinance to Amend the Kerosene Oil
(Repayment of Duty) Ordinance, 1928.**Date of
commencement.*16th November, 1929.*

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 Kerosene Oil
(Repayment of Duty) (Amendment) Ordinance, 1929 ”, and

No. 1 of 1928.

shall be read as one with the Kerosene Oil (Repayment of
Duty) Ordinance, 1928, hereinafter referred to as “ the
Principal Ordinance ”.

Amendment to
section 7 (2)
of the
Principal
Ordinance.

2. Sub-section (2) of section 7 of the Principal Ordinance
is hereby amended by the insertion of the words “ or justice
of the peace ” after the word “ Magistrate ” in line three
thereof.

1929

European Officers' Pensions

No. XXVII.

No. 27 OF 1929.

[16TH NOVEMBER, 1929.] Date of assent.

**An Ordinance to Amend the European Officers'
Pensions Ordinance, 1927.**

16th November, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the European Officers' Pensions (Amendment) Ordinance, 1929,” and shall be read as one with the European Officers' Pensions Ordinance, 1927, hereinafter referred to as “ the Principal Ordinance.”

Short title.

No. 21 of 1927.

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

Amendment
of section 7 of
the Principal
Ordinance.

(a) By the addition at the end of paragraph (a) of the following :—

“ or, in the case of an officer who becomes a Governor within the meaning of the Acts of Parliament shortly entitled the Pensions (Governors of Dominions, etc.) Act, 1911, and the Pensions (Governors of Dominions, etc.) Act, 1913, or any Act of Parliament replacing or amending the same, upon retirement in any circumstances rendering him eligible for a pension under any of the said Acts.”

(b) By the addition of the following paragraph after paragraph (f) :—

“ (g) On retirement in circumstances rendering him eligible for a pension under the Pensions (Governors of Dominions, etc.) Act, 1911, or any Act amending or replacing the same.”

Age of
compulsory
retirement.

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

“ 9. It shall be lawful for the Governor in Council, with the approval of the Secretary of State, to require an European officer to retire from the service of Kenya—

(a) in the case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, at any time after he attains the age of fifty years or completes twenty years' East African service, whichever is the earlier ;

(b) in the case of any other officer, at any time after he attains the age of fifty years.”

Liability of
pensioners to
be called upon
to take further
employment.

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

“ 11. Every pension granted to an European officer shall be subject to the following conditions :—

(a) in the case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, unless or until he has attained the age of fifty years or has completed twenty years' East African service, whichever is the earlier ;

(b) in the case of any other officer, unless or until he has attained the age of fifty years,

he may, if physically fit for service, be called upon by the Secretary of State to accept, in lieu of his pension, an office, whether in Kenya or in other public service, not less in value, due regard being had to circumstances of climate, than the office which he had at the date of the grant of his pension.

If a pensioner so called upon declines to accept the office for which he may have been selected, the payment of his pension may be suspended until he has attained the age of fifty years.

Amendment of
section 13 of
the Principal
Ordinance.

5. Section 13 of the Principal Ordinance is hereby amended by the insertion of the words “ or in other public service ” after the word “ Kenya ” in line 3 thereof.

1929

Trustee

No. XXVIII.

No. 28 OF 1929.

[16TH NOVEMBER, 1929.] Date of assent.

An Ordinance relating to Trustees.*16th November, 1929.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Trustee Short title.
Ordinance, 1929 ”.

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

“ Authorized investments ” mean investments authorised
by the instrument, if any, creating the trust for the investment
of money subject to the trust, or by law ;

“ Contingent right ” as applied to land includes a con-
tingent or executory interest, a possibility coupled with an
interest, whether the object of the gift or limitation of the
interest or possibility is or is not ascertained, also a right of
entry, whether immediate or future, and whether vested or
contingent ;

“ Convey ” and “ conveyance ” as applied to any person
include the execution by that person of every necessary or
suitable assurance (including an assent) for conveying, assign-
ing, appointing, surrendering, or otherwise transferring or
disposing of land whereof he is seised or possessed, or wherein
he is entitled to a contingent right, either for his whole estate
or for any less estate, together with the performance of all
formalities required by law for the validity of the conveyance ;

“ Court ” means the Supreme Court of Kenya or a judge
thereof ;

“ Instrument ” includes Ordinance ;

“ Land ” includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land; and in this definition “ mines ” and “ minerals ” include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof; and “ hereditaments ” means immovable property which under an intestacy would devolve on an heir;

Cap. 142.

“ Mortgage ” and “ mortgagee ” include a charge or chargee by way of legal mortgage or under the Registration of Titles Ordinance, and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“ Pay ” and “ payment ” as applied in relation to stocks and securities and in connection with the expression “ into court ” include the deposit or transfer of the same in or into court;

“ Personal representative ” means the executor, original or by representation, or administrator for the time being of a deceased person;

“ Possession ” includes receipt of rents and profits or the right to receive the same, if any; “ income ” includes rents and profits; and “ possessed ” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

“ Property ” includes immovable and movable property, and any estate, share and interest in any property, immovable or movable, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“ Rights ” includes estates and interests;

“ Sale ” includes an exchange;

“ Securities ” includes stocks, funds, and shares; and “ securities payable to bearer ” includes securities transferable by delivery or by delivery and endorsement;

“ Stock ” includes fully paid-up shares, and so far as relates to vesting orders made by the court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein ;

“ Transfer ” in relation to stock or securities includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee ;

“ Trust ” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, the expressions “ trust ” and “ trustee ” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “ trustee ” where the context admits, includes a personal representative, and “ new trustee ” includes an additional trustee ;

“ Trust corporation ” means the Public Trustee or a corporation appointed by the court in any particular case to be a trustee ;

“ Trust for sale ” in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale ; “ trustees for sale ” means the persons (including a personal representative) holding land on trust for sale ;

3. (1) This Ordinance, except where otherwise expressly provided, applies to trusts including, so far as this Ordinance applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Ordinance. Application of Ordinance.

(2) The powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Ordinance does not affect the legality or validity of anything done before the commencement of this Ordinance, except as otherwise hereinafter expressly provided.

PART I.

INVESTMENTS.

Authorised
investments.

4. A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say :—

- (a) In any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds ;
- (b) In any securities the interest on which is for the time being guaranteed by the Imperial Parliament or by the Government of the Colony, or in any public debentures issued under the authority of and guaranteed by any Ordinance ;
- (c) On the purchase of immovable property in the Colony held for an estate in fee simple or for a term of years of which not less than forty years is unexpired and which is not subject to a rent exceeding four per centum of the unimproved value thereof or to any condition of re-entry except for non-payment of rent, or on first mortgage thereon ;

and may also from time to time vary any such investment.

Discretion of
trustees.

5. Every power conferred by the last preceding section shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the trust funds.

Power to
retain
investment
which has
ceased to be
authorised.

6. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

Enlargement
of powers of
investment.

7. (1) A trustee having power to invest in freehold securities may invest and shall be deemed always to have had power to invest on mortgage of property held for an unexpired term of not less than forty years, and not subject to a reservation of rent greater than four per centum of the unimproved value thereof, or to any right of redemption or to any condition for re-entry, except for non-payment of rent.

(2) A trustee having power to invest in freehold securities may accept the security in the form of a legal charge under the Registration of Titles Ordinance.

Cap. 142.

(3) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may invest in the debenture stock of railway company or such other company as aforesaid.

8. (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments :

Investment in
bearer
securities.

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this sub-section, be deemed to be such an express prohibition as aforesaid.

(2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

9. (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court—

Loans and
investments by
trustees not
chargeable as
breaches of
trust.

(a) that in making the loan trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere ;
and

(b) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and

(c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Ordinance.

Liability for
loss by reason
of improper
investment.

10. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement of this Ordinance.

Powers
supplementary
to powers of
investment.

11. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale of land for an estate in fee simple or for a term having at least forty years to run by trustees, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a mortgage or legal charge of the land sold, with or without the security of any other property, such mortgage or legal charge, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof.

The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage or legal charge, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage or legal charge.

(3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

- (a) for the reconstruction of the company;
- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the amalgamation of the company with another company;
- (d) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, either exercise such right and apply

capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith :

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(5) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(6) Where the loan referred to in sub-section (1), or the sale referred to in sub-section (2), of this section is made under the order of the court, the powers conferred by those sub-sections respectively shall apply only if and as far as the court may by order direct.

Power to
deposit money
at bank and
to pay calls.

12. (1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

PART II.

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

General Powers.

Power of
trustees for
sale to sell by
auction, etc.

13. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof.

14. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate. Power to sell subject to depreciatory conditions.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales made before or after the commencement of this Ordinance.

15. (1) The receipt in writing of a trustee for any money, securities, or other movable property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof. Power of trustees to give receipts.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for sale of land.

(3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

16. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating Power to compound liabilities.

the trust, or by law, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, movable or immovable, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power to raise money by sale, mortgage, etc.

17. (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

Protection to purchasers and mortgagees dealing with trustees.

18. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

19. (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being. Devolution of powers or trusts.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this section "personal representative" does not include an executor who has renounced or has not proved.

20. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, for the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income. Power to insure.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

21. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf; or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, be capital money for the purposes of the trust. Application of insurance money where policy kept up under any trust, power or obligation.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay

the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;

(b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any law or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Ordinance, but only to money received after such commencement.

Deposit of
documents for
safe custody.

22. Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary
interests,
valuations,
and audit.

23. (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

(a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;

- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

- (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken :

Provided that nothing in this sub-section shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to
employ
agents.

24. (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether an advocate, banker, stockbroker or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the Colony or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as aforesaid—

(a) a trustee may appoint an advocate to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the

trustee under the trust, by permitting the advocate to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;

- (b) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the advocate shall have the same validity and effect as if the person appointing the advocate had not been a trustee;
- (c) a trustee may appoint a banker or advocate to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or advocate to have the custody of, and to produce, the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this sub-section shall exempt a trustee from any liability which he would have incurred if this Ordinance and any enactment replaced by this Ordinance had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or advocate for a period longer than is reasonably necessary to enable the banker or advocate, as the case may be, to pay or transfer the same to the trustee.

This sub-section applies whether the money or valuable consideration or property was or is received before or after the commencement of this Ordinance.

25. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to

Power to
concur with
others.

such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to
delegate
trusts during
absence
abroad.

26. (1) A trustee intending to remain out of the Colony for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the Colony of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons :

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this sub-section.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of the Colony, and shall be revoked by his return.

Cap. 140.
Cap. 142.

(4) The power of attorney shall be attested by at least one witness and shall be registered under the Crown Lands Ordinance or the Registration of Titles Ordinance within ten days after the execution thereof with a statutory declaration by the donor that he intends to remain out of the Colony for a period exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or

otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

Indemnities.

- 27.** (1) Where a personal representative or trustee liable as such for—
- (a) any rent, covenant, or agreement reserved by or contained in any lease; or
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent-charge; or
- (c) any indemnity given in respect of any rent, covenant, or agreement referred to in either of the foregoing paragraphs,

Protection
against
liability in
respect of
rents and
covenants.

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal

representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof, and thereafter—

- (i) he may distribute the residuary movable and immovable estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section, "lease" includes an under-lease and an agreement for a lease or under-lease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving the title under them.

Protection by
means of
advertisements.

28. (1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees of a settlement or of a disposition on trust for sale or personal representatives may give notice by advertisement in the Gazette, and in a daily or weekly newspaper circulating in the Colony, and such other like notices,

including notices elsewhere than in the Colony, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice, and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—

- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
- (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

29. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Protection in
regard to
notice.

Exoneration
of trustees in
respect of
certain powers
of attorney.

30. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying :

Provided that—

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made ;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied
indemnity
of trustees.

31. (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Maintenance, Advancement and Protective Trusts.

Power to
apply
income for
maintenance
and to
accumulate
surplus
income during
a minority.

32. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

- (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of

the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

- (a) any other fund applicable to the same purpose ; or
 - (b) any person bound by law to provide for his maintenance or education ; and
- (ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees may thenceforth at their sole discretion pay the whole or such part, if any, as they may think fit of the income of that property and of any accretion thereto under sub-section (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest :

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes ; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows :—

- (i) If any such person—
 - (a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest ; or

(b) on attaining the age of twenty-one years or on marriage under that age becomes absolutely entitled to the property from which such income arose,

the trustees shall hold the accumulations in trust for such person absolutely and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as under the general law the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuity for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuity shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Ordinance.

33. (1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs :

Power of advancement.

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property ; and
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share ; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land.

(3) This section does not apply to trusts constituted or created before the commencement of this Ordinance.

34. (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called " the principal beneficiary ") for the period of his life or for any

Protective trusts.

less period, then, during that period (in this section called "the trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely :—

(i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine.

(ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—

(a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or

(b) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the commencement of this Ordinance, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust be liable to be set aside.

PART III.

APPOINTMENT AND DISCHARGE OF TRUSTEES.

35. (1) Where, at the commencement of this Ordinance, there are more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

Limitation of the number of trustees.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Ordinance—

(a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(b) the number of the trustees shall not be increased beyond four.

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes.

36. (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the Colony for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Ordinance on the number of trustees—

Power of appointing new or additional trustees.

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the person exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the Colony, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Ordinance on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved either before or after the commencement of this Ordinance, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by sub-section (1) of this section or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had

power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case—

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust or any law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(9) Where a lunatic or defective, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by a judge to make the appointment.

Supplemental
provisions as
to appoint-
ment of
trustees.

37. (1) On the appointment of a trustee for the whole or any part of trust property—

- (a) the number of trustees may, subject to the restrictions imposed by this Ordinance on the number of trustees, be increased; and
- (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and
- (c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Ordinance shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

Evidence as to
a vacancy
in a trust.

38. (1) A statement, contained in any instrument coming into operation after the commencement of this Ordinance by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Colony for more than twelve months or refuses or is unfit to

act or is incapable of acting or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

39. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Ordinance without any new trustee being appointed in his place.

Retirement of trustee without a new appointment.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

40. (1) Where by a deed a new trustee is appointed to perform any trust, then—

Vesting of trust property in new or continuing trustees.

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates; and

(b) if the deed is made after commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to

the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and

(b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Ordinance, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in sub-sections (1) and (2) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend—

(a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any enactment or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Ordinance or Act of Parliament.

In this sub-section "lease" includes an under-lease and an agreement for a lease or under-lease.

(5) For purposes of registration of the deed in any registry, the person or persons making the declaration, expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Ordinance.

PART IV.

POWERS OF THE COURT.

Appointment of New Trustees.

41. (1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

Power of court to appoint new trustees.

In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section gives power to appoint an executor or administrator.

Power to
authorise
remuneration.

42. Where the court appoints a person or corporation, other than the Public Trustee, to be a trustee either solely or jointly with another person, the court may authorise such person or corporation to charge such remuneration for his or its services as trustee as the court may think fit.

Powers of new
trustee
appointed by
the court.

43. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting Orders.

Vesting orders
of land.

44. In any of the following cases, namely :—

- (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) is under disability; or
 - (b) is out of the jurisdiction of the court; or
 - (c) cannot be found, or, being a corporation, has been dissolved;
- (iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;

- (iv) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (v) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (vi) Where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;
- (vii) Where land or any interest therein is vested in a trustee, whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Ordinance called a "vesting order") vesting the land interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:

Provided that—

- (a) where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the court may direct in the persons who, on the appointment, are the trustees; and
- (b) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

Orders as to
contingent
rights of
unborn
persons.

45. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order
in place of
conveyance by
infant
mortgagee.

46. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order
consequential
on order for
sale or
mortgage
of land.

47. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Ordinance, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order
consequential
on judgment
for specific
performance,
etc.

48. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Ordinance; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or

transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Ordinance;

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

49. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect— Effect of vesting order.

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

50. In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order made under the appropriate provision. Power to appoint person to convey.

51. (1) In any of the following cases, namely :—

- (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;

Vesting orders as to stock and things in action.

- (ii) Where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
 - (a) is under disability; or
 - (b) is out of the jurisdiction of the court; or
 - (c) cannot be found, or, being a corporation, has been dissolved; or
 - (d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
 - (e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;
- (iii) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (iv) Where stock is standing in the name of a deceased person whose personal representative is under disability;
- (v) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint:

Provided that—

- (a) Where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

- (b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(2) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer :

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Ordinance, may transfer the stock to himself or any other person, according to the order, and all corporations, associations and companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for any corporation, association or company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Ordinance is to be exercised.

(6) The provisions of this Ordinance as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or under any Ordinance or Order in Council relating to merchant shipping as if they were stock.

52. The powers conferred by this Ordinance as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

Vesting orders
of charity
property.

Vesting orders
in relation to
infant's
beneficial
interests.

53. Where an infant is beneficially entitled to any property, the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

- (a) appointing a person to convey such property ; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

Orders made
upon certain
allegations to
be conclusive
evidence.

54. Where a vesting order is made as to any land under this Ordinance founded on an allegation of any of the following matters, namely—

- (a) the personal incapacity of a trustee or mortgagee ; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved ; or
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor ; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage, is living or dead ; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested ;

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order ; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Jurisdiction to make other Orders.

55. (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

Power of court to authorise dealings with trust property.

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

56. (1) An order under this Ordinance for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

Persons entitled to apply for orders.

(2) An order under this Ordinance concerning any interest in land, stock, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

57. Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and

Power to give judgment in absence of a trustee.

give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his advocate at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to
charge costs
on trust
estate.

58. The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

Power to
relieve trustee
from personal
liability.

59. If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

Power to
make
beneficiary
indemnity for
breach of
trust.

60. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section applies to breaches of trust committed as well before as after the commencement of this Ordinance.

Payment into Court.

Payment into
court by
trustees.

61. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.



(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

62. This Ordinance, and every order purporting to be made under this Ordinance, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

Indemnity for
acts done in
pursuance to
Ordinance.

General Provisions.

63. The Chief Justice may make Rules of Court regulating the practice and procedure in respect of any proceedings in the Supreme Court under this Ordinance.

Rules of
Court.

64. The provisions of this Ordinance bind the Crown.

Ordinance
binding on
Crown.

Date of assent.

[16TH NOVEMBER, 1929.]

**An Ordinance to Amend the Registration of
Titles Ordinance.**

Date of
commencement.

16th November, 1929.

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

Short title.

1. This Ordinance may be cited as “ the Registration of
Titles (Amendment) Ordinance, 1929,” and shall be read as
one with the Registration of Titles Ordinance (Chapter 142
of the Revised Edition), hereinafter referred to as “ the Prin-
cipal Ordinance.”

Amendment of
section 1 of
the Principal
Ordinance.

2. Section 1 of the Principal Ordinance is hereby
amended by the insertion of the following sub-section after
sub-section (2) thereof :—

(2A) Nothing in this Ordinance contained shall apply
to land in respect of which a lease has issued from the
Crown for a term of years and in respect of which the
Crown has covenanted to grant a further lease upon com-
pliance with building conditions, and such renewal or
extension of lease may be made, issued and registered as
though this Ordinance had never been enacted.

Ordinance not
to apply to
grants.

3. This Ordinance shall not apply to grants issued under
the Principal Ordinance before the date of this Ordinance.

Option to
lessee to have
lease or grant
under the
Principal
Ordinance.

4. Notwithstanding anything contained in section 2 of
this Ordinance a lessee may elect to have a further lease or
grant under the Principal Ordinance and in that event such
lease or grant shall be issued under the Principal Ordinance
and shall be subject to the Principal Ordinance as though this
Ordinance had never been enacted.

1929

Electric Power

No. XXX.

No. 30 OF 1929.

[31ST DECEMBER, 1929.] Date of assent.

An Ordinance to Amend the Electric Power Ordinance.

31st December, 1929.

Date of commencement.

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

1. This Ordinance may be cited as "the Electric Power (Amendment) Ordinance, 1929," and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

Short title.

2. Sub-section (2) (d) of section 27 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

Repeal and replacement of section 27 (2) (d) of the Principal Ordinance.

"(2) (d) Notwithstanding anything in this section contained, the owner or occupier of any premises shall not be entitled to demand or continue to receive for other than normal and regular use from any authorised distributors a supply of electricity for any premises having a separate supply of electricity or a supply (in use or ready for use for the purposes for which such emergency supply of electricity is required) of gas, steam or other form of energy unless such owner or occupier has agreed with the distributors to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure incurred by them in providing such emergency supply and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises. The sum to be so paid shall be determined in default of agreement by arbitration in accordance with the provisions of the Arbitration Ordinance."

Cap. 18.

Amendment of
section 49
(a) (iii) of the
Principal
Ordinance.

3. Sub-section (a) (iii) of section 49 of the Principal Ordinance is hereby amended by the addition thereto of the following proviso :—

“ Provided that the licensee shall be deemed to have complied with the requirements of this clause if at his own expense he shall cause to be interposed between his standard distribution system operating at a standard pressure and the consumer's electrical plant, an efficient electrical device which will enable the consumer to continue to use any current-consuming device or apparatus already in use by him.”

1929

Fencing

No. XXXI.

No. 31 OF 1929.

[31ST DECEMBER, 1929.] Date of assent.

**An Ordinance to make Provision for the Fencing
of Farms and Other Holdings.**

*By Notice.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Fencing Ordinance, 1929,” and shall come into force on such date as the Governor may by notice in the Gazette appoint. Short title and commencement.

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

“ Arbitration ” means arbitration in accordance with the provisions of the Arbitration Ordinance or any Ordinance substituted therefor; Cap. 18.

“ Clean area ” means any area declared to be free from East Coast Fever, and to be a “ clean area ” by proclamation under section 4 of the Diseases of Animals Ordinance; Cap. 157.

“ Contribution ” means a contribution by an owner in accordance with this Ordinance towards the cost of a dividing fence and “ to contribute ” shall be construed accordingly;

“ Cost ” shall in respect of the erection, alteration or repair of any fence, include any cost of or incidental to such erection, alteration or repair, including the cost of the transport of materials;

“ Director ” means the Director of Agriculture;

“ Dividing fence ” means, in relation to a holding, a fence erected on or near as possible to any boundary of such holding and separating such holding from another holding, public road, or railway, and includes any means of passing over or through such fence;

“ Fence ” means a structure—

- (a) which is in conformity with the type and standard of fence which may be prescribed by rules under this Ordinance;
- (b) which may be agreed upon between adjoining owners and which in the opinion of the Director is not less efficient than any fence of a type or standard prescribed by rules under this Ordinance;

and “ to fence ” shall be construed accordingly.

“ Fencing District ” means any defined area which has been declared by the Director by notice in the Gazette to be a fencing district for the purposes of this Ordinance;

“ Holding ” means :—

- (a) Any defined area of land held by any person or authority under separate grant, deed of transfer, or certificate of title; or
- (f) Any area of land held or occupied by virtue of a lease or licence under the provisions of any law for the time being in force in the Colony: Provided that the unexpired portion of the term of such lease or licence is not less than ten years; or
- (c) Any native reserve or any other land lawfully occupied by natives; or
- (d) Any unalienated Crown land or forest reserve; or
- (e) Any area of land vested in a Municipal or Local Authority in accordance with the provisions of any law for the time being in force in the Colony;

Provided that where two or more holdings adjoin each other and such holdings though held under separate titles are the property of one owner such holdings may with the approval of the Director, be deemed to be one holding for the purposes of this Ordinance:

“ Infected area ” means any area declared to be infected with East Coast Fever and to be an “ infected area ” by proclamation under section 4 of the Diseases of Animals Ordinance;

“ Inspector ” means an officer of the Department of Agriculture and such other person or persons as the Governor may by notice in the Gazette appoint for the purposes of this Ordinance ;

“ Interest ” means such rate of interest as the Governor may by notice in the Gazette prescribe for the purposes of this Ordinance ;

“ Owner ” means :—

- (a) Any person, company, co-partnership or public body in actual occupation or entitled as grantee, lessee, or licensee to occupy any land, or the representative or agent of any such person, company, co-partnership or public body ;
- (b) Any person lawfully occupying any land by virtue of a lease or licence from the Crown in accordance with the provisions of any law for the time being in force in the Colony, and the representative or agent of such person ;
- (c) In respect of unalienated land within a native reserve or in respect of other land lawfully occupied by natives, the person or authority in which the control of such land is lawfully vested ;
- (d) In respect of unalienated Crown land and forest reserves, the person or authority in which the control of such land is lawfully vested ;
- (e) In respect of any area of land vested in a Municipal or Local Authority in accordance with the provisions of any law for the time being in force in the Colony, such municipal or local authority ;
- (f) In respect of a line of Railway, the Railway Authority ;
- (g) In respect of a public road, the Road Authority ;

“ Public road ” means any road lawfully constructed or maintained out of public funds and includes outspans and any land lawfully reserved, resumed or acquired for, any such road ;

“ Railway ” means a line of railway under the control or management of the High Commissioner for Transport and includes any land lawfully reserved, resumed or acquired therefor;

“ Railway Authority ” means the High Commissioner for Transport;

“ Repair ” shall, in relation to any fence or ditch or any part thereof, include trimming, cutting, or in any other manner whatever putting and maintaining the same in good order;

“ Road Authority ” means the Governor or such person or authority as he may by notice in the Gazette appoint for the purposes of this Ordinance;

Provided that when the roads or any of them in any area or district have been vested in or placed under the management and control of a Local Authority in accordance with the provisions of any law for the time being in force, the said Local Authority shall be the Road Authority for the purposes of this Ordinance in respect of the roads so vested in such Local Authority.

PART I.

DIVIDING FENCES, ADVANCES FOR ERECTION THEREOF AND CONTRIBUTIONS TOWARDS COST OF ERECTION.

Bringing areas
under the
operation of
the Ordinance.

3. (1) Whenever it shall be made to appear to the Director,

- (a) that the majority of owners in any area are desirous of being brought under the operation of this Ordinance:
- (b) that such area is adequate in extent and suitable for the purposes of this Ordinance; and
- (c) that the application of the provisions of this Ordinance to such area shall be beneficial to the agricultural interests of the owners, both individually and collectively, therein;

he shall by notice in the Gazette declare such area to be a fencing district.

(2) On the declaration of any fencing district as aforesaid the District Commissioner concerned shall forthwith convene a meeting of all the owners in such fencing district by serving a written notice by hand or registered post on such owners prescribing a date and place for the holding of such meeting and setting forth the objects of such meeting: Provided that such notice shall have been given not less than 30 days before the holding of such meeting.

(3) At such meeting convened as aforesaid, the District Commissioner, who shall not vote, shall act as Chairman and shall record the votes of all owners who are in favour of being brought under the provisions of this Ordinance and of all those owners who are not so in favour: Provided that any owner who shall be absent from the meeting and who has not expressed himself in writing to the contrary shall be deemed to be in favour of being brought under the provisions of this Ordinance and his vote shall be recorded accordingly.

(4) If on the holding of such meeting a majority of two-thirds of the owners vote in favour of being brought under the provisions of this Ordinance the District Commissioner shall transmit to the Governor a certificate under his hand of the voting of such meeting.

(5) On the receipt of the District Commissioner's certificate as aforesaid the Governor may by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to such fencing district and such fencing district shall thereupon become a "proclaimed district" for the purposes of this Ordinance.

4. The Governor may, on the advice of the Senior Commissioner who shall first consult the Local Native Council or other native authority concerned, if he is satisfied that funds are available for that purpose from sources approved by him, declare by proclamation in the Gazette that the provisions of this Ordinance shall apply to any area within the jurisdiction of any Local Native Council or other native authority and such area shall thereupon become a "proclaimed district" for the purposes of this Ordinance.

Bringing
Native
areas
under the
operation of
the Ordinance.

5. (1) It shall be obligatory on the owner of a holding within a proclaimed district to erect and maintain a fence along the boundaries of the said holding and the erection of such fence shall be completed within a period which may be specified by the Director.

Fencing
obligatory in
proclaimed
district.

(2) If an owner fails to erect a fence in accordance with the provisions of the last preceding sub-section the Director may cause such fence to be erected and may recover the cost thereof from the owner in manner provided by section 13 of this Ordinance.

Adjoining
owner shall
contribute
half the cost.

6. (1) Whenever a fence has been erected in accordance with the provisions of the last preceding section the owner of the holding may require the owner of an adjoining holding, whether such last mentioned holding is within or without a proclaimed district, to contribute half the cost of the erection and maintenance of that portion of the fence dividing the two holdings and such contribution shall be recoverable summarily as a civil debt.

(2) Whenever a railway or public road abuts on a holding upon which a fence has been erected in accordance with the provisions of section 5, the owner of the holding may require the Railway or Road Authority, as the case may be, to contribute half the cost of the erection and maintenance of that portion of the fence which abuts on such railway or public road.

Erection of
fences in
other than
proclaimed
districts and
contributions
towards cost
thereof.

7. (1) Notwithstanding anything in this Ordinance contained it shall be lawful for the owner of a holding, not being a holding within a proclaimed district to fence all or any of the boundaries of such holding.

(2) (a) The owner of a holding in a clean area who has fenced such holding under the provisions of the last preceding sub-section may require the owner of an adjoining holding to contribute half the cost of the erection and maintenance of that portion of the dividing fence between the two holdings and such contribution may be recovered summarily as a civil debt.

(b) The owner of a holding in an infected area who has fenced such holding under the provisions of sub-section (1) hereof may require the owner of an adjoining holding to contribute half the cost of the erection and maintenance of that portion of such fence dividing the two holdings and such contribution may be recovered summarily as a civil debt: Provided that if such adjoining owner derives no benefit from such dividing fence then and in such case he shall not be

liable to contribute as aforesaid, and in the event of disagreement between the said owners on the question of the said contribution the matter shall be determined by arbitration.

Provided that the contribution payable under this sub-section shall not exceed the amount which would be recoverable if the fence were a six-wire fence.

(3) If a railway or public road abuts on the boundary of a holding which has been completely fenced under the provisions of sub-section (1) of this section the owner of the holding may require the Railway or Road Authority as the case may be to contribute half the cost of the erection and maintenance of that portion of the fence which abuts on such railway or public road: Provided that such contribution shall not exceed the amount which would be payable if the fence were a six-wire fence.

8. (1) Every owner who intends to erect a dividing fence upon his holding under the provisions of sections 5 or 7 may, if he desires that the owner of an adjoining holding or Railway or Road Authority shall contribute to the cost of the erection and maintenance of such fence, transmit to that owner or authority written notice dated and in the form as nearly as possible set out in the Schedule to this Ordinance, of such intention, and when he transmits such notice he shall attach thereto the specification of the dividing fence which he desires to erect, together with a statement of the estimated cost thereof.

Notice to adjoining owners of intention to erect a dividing fence.

(2) If the last mentioned owner or the Railway or Road Authority fail, within a period of one month after the date when the said notice was transmitted, to lodge with the owner who transmitted the notice an objection thereto, the latter may forthwith proceed with the erection of the dividing fence.

(3) If an owner or the Railway or Road Authority to whom the said notice has been transmitted, lodge an objection within the said period and state therein that he desires to erect a dividing fence of a different type and transmit with the objection a specification of the type of fence he desires to erect, either party may, in default of agreement between them, claim that the matter shall be submitted to arbitration.

(4) The provisions of this section shall apply *mutatis mutandis* in respect of a dividing fence existing at the commencement of this Ordinance : provided in either case that the fence is in good order.

Notice to
absentee
owner.

9. If the whereabouts of any owner be unknown or if he be absent from the Colony, the notice mentioned in the last preceding section shall be deemed to be duly given—

(a) when it is given to a person generally or specially authorised by him to be his representative or agent or if there be no such authorised representative or agent known to the person required to give the notice ;

(b) when it has been published once in the Gazette and three times in a newspaper published and circulating in the Colony :

Provided that in the case described in paragraph (b) a period of three months shall be substituted for the period of one month prescribed by the last preceding section as the period within which objections shall be lodged or the terms of the notice shall be complied with.

The cost of publication described in paragraph (b) shall be added to the contribution towards the cost of the fence required to be made by the owner whose whereabouts is unknown or who is absent from the Colony.

Contribution
towards the
cost of the
fence already
erected.

10. If before the commencement of this Ordinance a holding has been completely enclosed by a fence the owner of such holding may, provided the fence is in good repair, require the owner of an adjoining holding or the Railway or Road Authority as the case may be to contribute towards the value of such fence in the same manner *mutatis mutandis* as is provided by sections 6 and 7.

Provided that should the parties concerned fail to agree as to the value of the said fence for the purposes of the aforesaid contributions the value thereof shall be determined by arbitration.

11. An inspector may enter upon any holding to inspect any fence and if he be of the opinion that the same is in need of any repairs, he may give written notice to the owners to execute any such repairs within a period to be specified in the notice and, in default of compliance with the terms of the said notice, the Director may proceed to execute such repairs and the costs thereof may be recovered summarily as a civil debt. Repairs.

PART II.

COMPULSORY FENCING TO PREVENT THE SPREAD OF STOCK DISEASES IN A CLEAN AREA.

12. (1) For the purposes of preventing the spread of disease amongst stock, as defined in the Diseases of Animals Ordinance, and notwithstanding anything in this Ordinance contained, the Director may, in his sole discretion, by written notice, require any owner of any holding in an infected area within a clean area to erect and maintain a fence along the whole or any part of the boundaries of such holding and within such period of time as may be specified in such notice. Fences in infected area-
Cap. 157.

(2) The specifications of any such fence required to be erected as aforesaid shall be determined by the Director.

(3) If an owner who has been required to erect a fence under the provisions of sub-section (1) of this section shall fail to erect such fence within the period specified in the notice the Director may cause the same to be erected.

13. (1) The cost of any dividing fence caused to be erected by the Director under this Part shall, in the first instance be defrayed out of moneys specifically appropriated for that purpose by Legislative Council. Cost of erection of fences and repayment of same by owners.

(2) The total cost of any such fence (not exceeding the cost of an ordinary six-wire fence) together with interest thereon shall be repaid in equal proportions by the owners of any two holdings divided by the said fence and such owners shall jointly be responsible for the repair and maintenance of such fence.

(3) The total cost and interest as aforesaid shall be repaid in equal half-yearly instalments extending over a period of not more than ten years commencing as regards the first instalment not less than two years from the date on which the erection of the fence was completed: Provided that an amount not exceeding ten pounds shall be payable by each owner immediately on such completion. Such moneys shall be secured and collected in such manner as the Governor may by rules under this Ordinance prescribe. *

Special provisions relating to repayment by lessees of Crown lands of cost of fences erected.

14. (1) In any case where Crown land has been fenced under the provisions of this Part and has before the erection of the fencing been leased or licensed under the provisions of any law for the time being in force in the Colony, the lessee or licensee shall, if the unexpired portion of such lease or licence does not exceed ten years, in addition to the rent or fee payable under his lease or licence, pay to the Government the interest on the total cost to Government of such fence from the date of the completion thereof: Provided that the lessee or licensee may if he so desire cancel his lease or licence.

(2) If a lease or licence referred to in sub-section (1) of this section contains a right of conditional lease of the said land for any period exceeding ten years, then upon that right being exercised, the conditional purchaser shall, as from the date on which the purchase takes effect become liable for and shall pay to the Government from time to time as prescribed by this Part the instalments due to the Government, together with interest. The period between the date of completion of the fence and the date when the lease takes effect shall be reckoned as part of the time within which the cost of erection shall be repaid, and the instalments which shall be payable during that period shall be added to the purchase price of the land and any instalments of purchase price which will become due under such terms of the lease as relate to conditional lease of the land shall be increased accordingly.

Repayment of cost of fencing town lands under this Part.

15. Whenever the Director has incurred any costs in respect of the erection or maintenance of fencing under this Part of any town lands which are vested in any Municipal or Local Authority one-half of the cost shall be payable by such Municipal or Local Authority and also one-half by the adjoining owner in manner provided by this Part.

16. Nothing in this Part contained shall be construed as preventing any person liable thereunder for any part of the costs of the erection of a fence, from contributing labour or transport towards such costs and any such contribution shall be set off against the amounts due under this Part.

Contributions
in kind towards
fencing under
this Part.

17. If a fence erected under this Part divide the holdings of adjoining owners, each adjoining owner shall pay one-half of the amount to be repaid in accordance with this Part, of that portion of the fence dividing those holdings, together with the interest aforesaid.

Liability of
adjoining
owners under
this Part.

18. No person shall, whether or not the cost of the fence with the interest thereon have been repaid, remove any fence erected under this Part unless he has previously obtained the written permission of the Director, and, in any proceedings for a contravention of this section, the burden of proving that he has previously obtained such permission shall lie on the said person.

Fence not to
be removed
without
consent.

19. Whenever in a clean area a public road only becomes infected, it shall then be the duty of the Road Authority to erect fences on both sides of such public road to the extent required by and to the satisfaction of the Director.

Road
Authority to
erect fences on
both sides of
public road
in certain
cases.

Provided that whenever a fence erected under this section is no longer required for the purpose for which it was erected the Road Authority may sell that fence or any portion thereof to any person desiring to purchase it.

20. The Director may after consultation with the Road Authority cause fences to be erected :—

Buffer
fencing.

(a) Along the boundaries of any road, whether public or private ;

(b) Along the boundaries of any number of holdings, and cost of any fence erected under this section shall be defrayed entirely out of the moneys specifically appropriated by the Legislative Council for the purpose of this Part and no contribution shall be payable by any owner or other person in respect of the fence ;

Provided that whenever a fence erected under this section is no longer required for the purpose for which it was erected the Director may sell that fence or any portion thereof to any person desiring to purchase it.

Repair of
fences
erected under
this Part.

21. If any fence erected under this Part, or any gate connected therewith, be out of repair and the owners on either side fail to repair it, the Director may cause written notice to be served upon the person or persons liable to pay for the cost or part of the cost of the erection of the fence, to put the fence or the gate (as the case may be) in repair to the satisfaction of the Director and within a time to be fixed by the notice, and if such fence or gate be not put into satisfactory repair within the time so fixed, any person or persons nominated by the Director in writing may execute the repairs, and the cost thereof shall be added to and be deemed part of the cost of erection, and the provisions of this Part, relating to the repayment of the costs of the erection of the fence shall in all respects apply to the repayment and mode of securing repayment of the costs of such repairs.

In any case in which in the opinion of the Director the service of such notice cannot be effected without loss of considerable time, the Director may cause the repairs to be executed without such notice, and the cost shall be recoverable from the owner or owners in manner aforesaid.

PART III.

OFFENCES.

Leaving gates
open.

22. Any person who :—

- (a) Opens and leaves open or unfastened ; or
- (b) Finding open on passing through, neglects to shut and fasten any gate in any fence ;

shall be liable on conviction in the case of a first offence, to a fine not exceeding five pounds, or, in default of payment to imprisonment of either description for a period not exceeding fourteen days, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds, or, to imprisonment of either description for a period not exceeding one month, or to both such fine and imprisonment.

23. Any person who wilfully injures or removes any fence, gate, or other appliance or contrivance forming part of or incidental thereto, shall be liable on conviction to a fine not exceeding seventy-five pounds, or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Malicious
injury to
fences.

24. (1) Any person who inadvertently or accidentally damages any fence or gate situated upon a holding or on a public road within a holding, shall forthwith repair the same, and in the event of his being unable to do so he shall forthwith report the injury and inability to repair to the owner of the holding or the Railway or Road Authority and deposit or give security for such sum as may be reasonably sufficient to cover the cost of the repair, and the owner shall thereupon on request give such person an acknowledgment of the sum deposited or secured.

Accidentally
damaging
fencing.

(2) If any person fail to comply with the requirements of this section he shall be liable to a fine not exceeding ten pounds, or, in default of payment, to imprisonment of either description for a period not exceeding fourteen days.

25. Any person who having injured a fence or gate, or having climbed over or through a fence or gate without permission, fails, on request by the owner or lessee of the land on which it is situate or by some person authorised thereto by such owner or lessee, to give his correct name and address, shall be liable on conviction to a fine not exceeding twenty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding one month.

Failure to
give name
after injury to
fence.

26. Any person who wilfully fails to comply with or who contravenes any provision of, this Ordinance in respect whereof no penalty is expressly provided, shall be liable on conviction to a fine not exceeding twenty pounds, or, in default of payment, to imprisonment of either description for a period not exceeding one month.

Penalties
where not
expressly
provided

PART IV.

GENERAL AND MISCELLANEOUS.

27. (1) An owner shall have the right to fence his holding or to contribute towards the cost of erecting a dividing fence between such holding and any adjoining holding notwithstanding that such first-mentioned holding is subject to

Fencing of
land to
grazing
servitude.

an easement or licence for grazing or an easement or licence for watering livestock thereon in favour of any other owner or person whomsoever, provided that reasonable means of ingress and egress be allowed to the livestock of the person enjoying the easement or licence as to the suitability or sufficiency of the gates, either of them may claim that the matter shall be submitted to arbitration.

(2) The holder of an easement or licence for grazing as in sub-section (1) of this section described shall be liable to the owner of the holding for a fair share of the costs of erection, maintenance and repair of the fence proportionate to his interest in the grazing rights over the holding, and in default of agreement between the owner and the person enjoying the easement or licence as to their respective shares in the grazing rights either of them may claim that the matter shall be submitted to arbitration.

Settlement
of disputes.

28. Save where other provision is made in this Ordinance whenever two owners or an owner and the Railway or Road Authority are unable to agree as to any matter arising under this Ordinance in respect of which a dispute has arisen between the two owners or an owner and the Railway or Road Authority, the matter shall be submitted to arbitration.

Summary
proceedings
for recovery of
damages from
convicted
persons.

29. (1) Whenever any person is convicted by a court of competent jurisdiction of a contravention of section 23 or section 24 of this Ordinance and it appears that such person has by that offence caused damage to the owner or occupier of a holding, the court may, at the request of such owner or occupier, as the case may be, but in the presence of the convicted person, inquire summarily and without pleadings into the amount of damage so caused.

(2) Upon proof of such damage the court may give judgment therefor in favour of such owner or occupier, as the case may be, and against the convicted person, and such judgment shall be of the same force and effect, and be executed in the same manner, as if it had been given in a civil action duly instituted before such court: Provided that judgment shall not be given under this section for a sum exceeding fifty pounds.

30. Notwithstanding anything in this Ordinance contained it shall be lawful for an owner or Railway or Road Authority to erect a fence with a gate across a public road with the authority of the Governor in Council and subject to such conditions as he may prescribe in each case.

Gates across
public roads.

31. Any person erecting any fence whatsoever on land covered with bush may clear the bush for a distance not exceeding five feet on each side of and above such fence and may remove any tree standing in the immediate line of such fence, and the cost of such clearing shall be deemed to be part of the cost of erecting the fence.

Bush may be
cleared for
fencing.

32. (1) Whenever any holding fenced under this Ordinance is held under lease the unexpired portion of the term of which does not exceed ten years the owner shall be entitled during the remainder of the term of the lease to receive from the lessee, as from the date when such holding became so fenced, a payment of interest on any sum which such owner has paid in respect of the fence. The owner shall have the same rights in respect of recovering any such payment as he has in law to recover rent due to him from the lessee, and the lessee shall have the right to determine the lease, unless the owner's liability to contribute towards the cost of the fence arose from any act of the lessee.

Payment by
lessee to lessor
of fenced
holding under
this Ordinance.

(2) Whenever a holding to which the provisions of sections 5 and 12 of this Ordinance apply has been leased by the owner thereof and the unexpired portion of the term of such lease exceeds ten years at the date on which the provisions of the said sections become applicable to such holding, the lessee shall be deemed to be the owner of the said holding for the purpose of this Ordinance: Provided that when the interest of the said lessee in the said holding terminates, half of the cost incurred by the lessee in fencing the said holding under section 5 of this Ordinance or half of the instalments paid by him under section 14 in respect of fencing, but excluding interest on such cost or instalments shall be repaid to the lessee by the owner of the holding and such amount may be recovered summarily as a civil debt.

(3) If a holding has been fenced under the provisions of this Ordinance and before the erection of the fence any person had a right or option to purchase or lease such holding then

on the exercise of such right or option the cost of such fencing may be added to the purchase price and shall thereupon be deemed to be part thereof : Provided that the possessor of such right or option as aforesaid may waive the same.

**Give and
take line**

33. (1) If between two or more holdings a dividing line is formed by a water-course or a river (not being of such nature as to form a natural barrier for stock) or range of hills or ravine, outcrops of solid rock along which it is impracticable or inexpedient to erect a fence, the owners concerned may agree upon a fair give-and-take line as a dividing line to be fenced in accordance with this Ordinance, or, in default of such agreement, any such owner may claim that the matter shall be submitted to arbitration.

(2) Any give-and-take line so agreed or determined shall be deemed to be the boundary line for the purposes of this Ordinance, but shall not otherwise affect the titles to any such holdings.

**Repair of
fences.**

34. (1) If any dividing fence whatever be out of repair the owner of each holding separated by the fence shall be liable for the cost of the repair to the extent to which under this Ordinance he would be liable to contribute to the cost of such fence; and either owner may serve upon the other owner a notice requiring him within a period of one week to assist in repairing such fence; and if such other owner fail to comply with the terms of such notice the owner who has served the said notice may himself repair it and recover from the other owner summarily as a civil debt the proportion of the cost of repair due from him.

(2) Whenever the Railway or Road Authority has erected a fence in accordance with the provisions of this Ordinance and the owner of an adjoining holding is liable to contribute towards the cost of such fence the Railway or Road Authority may repair and maintain such fence and may recover from the said owner summarily as a civil debt the proportion of the cost of such repair and maintenance due from such owner.

(3) Save where other provision is made in this Ordinance any contribution for which any person is liable under this Ordinance may be recovered summarily as a civil debt.

35. Any owner of a holding separated from another holding by a dividing fence shall have the right at any time so to alter the fence as to make it a fence of a superior type : Provided that the owner of the adjoining holding separated by the fence shall not be liable to contribute to such alteration unless and until he derives benefit from the type of the fence as altered. The provisions of section 8 and of the next succeeding section shall apply *mutatis mutandis* as if the alteration were an erection or repair of the fence.

Right to alter
type of fence.

36. Any person erecting or repairing any dividing fence under the provisions of this Ordinance shall for himself, his servants, implements, materials, animals and vehicles have at all times reasonable access to any property for the purpose of carrying out the work reasonably required for the erection or repair.

Access to
persons
erecting
fences.

Provided that nothing in this section contained shall be construed as authorising the entry, without the consent of the occupant, upon land under cultivation or upon a garden, plantation or pleasure ground, or the cutting down, lopping or injury of any fruit trees, ornamental trees or shrubs.

37. For the purpose of inspection, valuation or survey or of carrying out any of the provisions of this Ordinance, any person authorised by the Director or any person appointed or nominated to determine a dispute in accordance with the provisions of the Arbitration Ordinance may enter upon any land and value, measure, survey, take grades and levels, fell trees, and do all other acts necessary for such purposes.

Access by
officials and
surveyors.

Cap. 18.

Provided that all damage caused by the exercise of the powers of this section shall, as far as possible be repaired, and so far as the repair of damage is not possible the value thereof shall be paid to the owner, and shall, in default of agreement, be submitted to arbitration.

38. If any civil proceedings be taken under this Ordinance against a lessee for which the owner would ultimately incur any liability, the owner may intervene and defend such proceedings, and any defence which is available to the lessee shall be available to the owner in addition to any other available defence.

Lessor may
intervene in
and defend
proceedings
against his
lessee.

Special civil jurisdiction of subordinate courts.

39. The subordinate court of first or second class of the district in which the defendant in any civil proceedings under this Ordinance resides shall have jurisdiction to entertain such proceedings and give judgment for the amount claimed, notwithstanding that the proceedings or amount claimed is, under the law relating to subordinate courts, outside the ordinary jurisdiction of the said courts.

Non-liability of owner or occupier for injury caused by contact with fence.

40. No owner or occupier of a holding shall be held liable in damages in respect of an injury caused to any person or to any property by such person or property coming in contact with any fence: Provided that the injury has not been occasioned by the negligence of such owner or occupier in erecting, altering, maintaining or repairing the said fence.

Fences to be erected along railway lines and public roads when such railway lines and public roads traverse fenced holdings.

41. (1) Whenever a line of railway traverses a holding, or part of a holding, which has been completely enclosed by a fence, or has been completely fenced except for that portion of the holding which abuts on such line of Railway, the Railway Authority shall on the request of the owner of such holding erect and maintain a fence on each side of that portion of such line of railway which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding. The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne entirely by the Railway Authority.

(2) Whenever a public road traverses a holding or part of a holding which has been completely enclosed by a fence before the public road traverses the holding, the Road Authority shall on the request of the owner of such holding erect and maintain a fence on each side of that portion of such public road which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding. The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne entirely by the Road Authority.

(3) Whenever a public road traverses a holding or part of a holding which has been completely fenced except for that portion of the holding which abuts on such public road, the Road Authority shall on the request of the owner of such

holding erect and maintain a fence on each side of that portion of such public road which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding. The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne half by the owner of the holding and half by the Road Authority.

(4) Whenever a line of railway or public road abuts on a holding and the owner has completely enclosed his holding except for that portion which abuts on such line of railway or public road the owner of such holding may call upon the Railway or Road Authority to erect and maintain a fence along such portion of the line of railway or public road as abuts on such holding, and the cost of such fence together with the cost of its repair and maintenance shall be borne half by the owner of the holding and half by the Railway or Road Authority as the case may be.

42. Save where in this Ordinance specific provision is made nothing in this Ordinance contained shall be construed as affecting any act done or right acquired prior to the commencement of this Ordinance under any contract, covenant, or agreement made between any lessor and lessee, or between the owners of adjoining holdings relative to dividing fences.

Ordinance not to affect agreements as to dividing fences.

43. Any right conferred or obligation or duty imposed by this Ordinance on an owner or lessee shall, if the Crown or Railway or Road Authority be the owner or lessee of a holding, whether by registration or otherwise, belong to or be binding upon it.

Ordinance to be binding on Crown as owner or lessee.

44. (1) Whenever under this Ordinance any person has lawfully erected a dividing fence or has been lawfully required to contribute towards the cost of erection, repair or maintenance of a dividing fence such person may receive an advance to defray the cost of any such erection, repair or maintenance for which such person is liable.

Advances.

(2) Advances for the purposes of this section may be made from :—

(a) The Land and Agricultural Bank of Kenya ;

(b) Such other public funds as the Legislative Council may set aside for that purpose :

Provided that the provisions of section 13 as to repayment of the cost and interest thereon in respect of fences erected by the Director shall, *mutatis mutandis*, apply in respect of the repayment of advances and interest thereon made under this section.

Rules.

45. The Governor in Council may make rules generally for the better carrying out of the purposes of this Ordinance.

SCHEDULE.

To.....
 Owner
 _____ of farm.....
 Agent for the owner
 Address.....

Notice of intention to fence.

Take notice in terms of section 8 of the Fencing Ordinance, 1929, that I desire to have a fence erected along the boundary line of my farm.....
 No.....and your farm.....
 No..... The work will be commenced on or about the.....day of.....19 ,
 in accordance with the specification hereunder appended, and I request that you will inform me whether it is your intention to contribute either labour or material or both, towards this fencing.

If no reply or objection to the proposed specification reaches me within one month after the date of this notice, the work will be proceeded with in the usual manner.

Date..... (Signature).....
 Owner

 Agent for

SPECIFICATION.

- (1) Height feet inches.
- (2) Number of wires : barbed,
 Number of wires : plain,

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Fencing

No. XXXI.

- (3) Distance apart of wires in inches from ground upwards,
- (4) Nature of straining posts,
- (5) Distance apart of straining posts, yards.
- (6) Nature of standards, (*i.e.*), stone poles, iron standards,
 lbs., wooden posts (minimum diameter in
 inches), etc.,
- (7) Distance apart of standards, yards.
- (8) Nature of droppers,
- (9) Distance apart of droppers, feet.
- (10) Number of gates : single,
 Number of gates : double,
- (11) Remarks : If necessary further explaining construction
 of fence, etc.
- (12) Length of proposed fence, yards.
- (13) Estimated cost, including erection, £.

Owner

 Agent for

No. XXXII.

Cattle Cleansing

1929

No. 32 OF 1929.

Date of assent.

[31ST DECEMBER, 1929.]

**An Ordinance to Provide for the Cleansing of
Cattle.**

Date of
commencement.*By Notice.*

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

Short title.

1. This Ordinance may be cited as “ the Cattle Cleansing Ordinance, 1929,” and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

Interpretation

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

“ cattle ” means bulis, cows, heifers, calves and oxen ;

“ cattle owner ” includes any person possessing jointly or severally any right, title or interest in any cattle or having the charge, control or management of any cattle ;

Cap. 157.

“ clean area ” means any area declared to be free from East Coast Fever and to be a clean area by proclamation under section 4 of the Diseases of Animals Ordinance ;

“ cleansing district ” means any defined area which has been declared by notice in the Gazette to be a cleansing district for the purposes of this Ordinance ;

“ dipping tank ” means any effective contrivance approved by the Chief Veterinary Officer for the cleaning of cattle by submersion and shall include structures incidental thereto ;

- “ effective tick destroying agent ” means any aqueous solution containing arsenious oxide or other ingredient in such percentage or proportion as may from time to time by notice in the Gazette be prescribed by the Chief Veterinary Officer;
- “ engorged tick ” means any tick obviously distended with blood;
- “ guard area ” means any holding or part of a holding within a clean area which has a common boundary with any infected area within such clean area;
- “ holding ” means—
- (a) any area of land held by any person or authority under separate grant, deed of transfer, or certificate of title; or
 - (b) any area of land held or occupied by virtue of a lease or licence under the provisions of any law for the time being in force in the Colony; or
 - (c) any native reserve or any other land lawfully occupied by natives;
- “ immune cattle ” means cattle bearing any registered Government brand denoting that such cattle are immune to East Coast Fever;
- “ infected area ” means any area declared to be infected with East Coast Fever and to be an infected area by proclamation under section 4 of the Diseases of Animals Ordinance; *Cap. 157.*
- “ inspector ” means any veterinary officer or stock inspector or such other officer as the Governor may by notice in the Gazette appoint for the purposes of this Ordinance;
- “ interest ” means such rate of interest as the Governor may by notice in the Gazette prescribe;
- “ landowner ” includes any person, company, co-partnership or public body in actual occupation of or entitled as owner to occupy any land, or the representative or agent of any such person, company, co-partnership or public body;

“ tick infestation ” means the presence on any cattle of one or more engorging ticks, not being “ bont legged ” (*Hyalomma aegyptium*) ticks;

“ to clean ” means to free and maintain free from tick infestation any cattle by the submersion of such cattle in a dipping tank containing an effective tick destroying agent and/or by hand dressing and clipping in such manner as the Chief Veterinary Officer may from time to time by notice in the Gazette prescribe.

Proclaimed districts.

3. (a) Whenever it shall be made to appear to the Senior Commissioner by representation of the majority of landowners and cattle owners in any area not included in a native reserve that such landowners and cattle owners are desirous of being brought under the operation of this Ordinance, the Chief Veterinary Officer after consultation with the Senior Commissioner shall, if he considers that such area can be satisfactorily controlled under the provisions of this Ordinance, declare such area to be a “ cleansing district.”

Provided that no area shall be declared to be a cleansing district under the provisions of this sub-section unless the Chief Veterinary Officer after consultation with the Senior Commissioner is satisfied that the application of the provisions of this Ordinance to such area shall be beneficial to the stock-owning interests of the owners, both individually and collectively, therein.

(b) On the declaration of any cleansing district the Senior Commissioner or other officer authorised by him in writing shall convene a meeting of all the landowners and cattle owners in such cleansing district by serving a written notice by hand or registered post on such landowners and cattle owners prescribing a date and place for the holding of such meeting, and setting forth the objects of such meeting: Provided that such notice shall have been given not less than 30 days before the holding of such meeting.

(c) At such meeting convened as aforesaid the Senior Commissioner or other officer authorised by him in writing, who shall not vote, shall act as Chairman and shall record the votes of all landowners and cattle owners who are in favour of being brought under the provisions of this

Ordinance and of all those landowners and cattle owners who are not so in favour: Provided that any absentee landowner or cattle owner who has not expressed himself in writing to the contrary shall be deemed to be in favour of being brought under the provisions of this Ordinance and his vote shall be recorded accordingly.

(d) If on the holding of such meeting a majority of ^{*the landowners*} ~~two-thirds of the landowners and cattle owners~~ vote in favour of being brought under the provisions of this Ordinance the Senior Commissioner shall transmit to the Governor a certificate under his hand of the voting of such meeting.

*See Ord.
13 of 1940*

(e) On receipt of the Senior Commissioner's certificate as aforesaid the Governor may if he sees fit by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to such cleansing district and such cleansing district shall thereupon become a "proclaimed district" for the purposes of this Ordinance.

(f) (i) Notwithstanding anything in this section contained landowners ~~not fewer than fifteen in number~~ whose holdings adjoin each other and who are desirous of being brought under the provisions of this Ordinance may transmit to the Senior Commissioner a written request on that behalf signed and attested by a magistrate and the Senior Commissioner after consultation with the Chief Veterinary Officer shall thereupon transmit such written and attested request together with a definition of the area occupied by such landowners to the Governor.

(ii) On receipt of the said written and attested request the Governor may if he sees fit by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to the area occupied by the said landowners and the said area shall thereupon become a proclaimed district for the purposes of this Ordinance.

4. The Governor may on the advice of the Senior Commissioner who shall first consult the Local Native Council or other native authority concerned if he is satisfied that funds are available for that purpose from sources approved by him, declare by proclamation in the Gazette that the provisions of this Ordinance shall apply to any area within the jurisdiction of any Local Native Council or other native authority and such area shall thereupon become a "proclaimed native district" for the purposes of this Ordinance.

*Bringing
native areas
under the
operation of
the Ordinance.*

Ordinance shall apply to guard areas and infected areas within clean areas.

5. Notwithstanding anything to the contrary herein contained the provisions of this Ordinance shall apply to all guard areas and infected areas wholly within a clean area and such guard areas and infected areas shall be deemed to be proclaimed districts or proclaimed native districts as the case may be for the purposes of this Ordinance.

Cattle cleaning in proclaimed districts compulsory.

6. Save as hereinafter provided, every cattle owner in a proclaimed district or proclaimed native district shall clean all cattle kept by him within such district at such hours on such dates and at such intervals as may from time to time be ordered in writing by an inspector.

Powers of inspectors.

7. In any proclaimed district or proclaimed native district, every inspector shall have full power and authority to inspect and count any cattle at any time and to take a sample or samples from the contents of any dipping tank, and to call upon all owners to produce all cattle in their possession or under their control or on their holding for the purpose of inspection and enumeration.

Chief Veterinary Officer may exempt owners from provisions of this Ordinance.

8. The Chief Veterinary Officer or inspector may, for considerations of weather, drought or condition of cattle, or other causes beyond the control of any landowner, or cattle owner, by writing under his hand, temporarily exempt such landowner or cattle owner from any of the provisions of this Ordinance. The Chief Veterinary Officer or inspector shall forthwith report each such exemption to the District Commissioner of the area in which such exemption is granted.

Landowners on whose land cattle are kept may be required to provide cleaning facilities

9. (1) Every landowner in a proclaimed district or proclaimed native district on whose land cattle are kept with the consent of such landowner shall provide facilities including the construction and maintenance of dipping tanks and the provision of effective tick destroying agents in sufficient quantities for the cleaning of such cattle, to the satisfaction of an inspector. Every such landowner shall take adequate steps to enforce the cleaning of such cattle, and every landowner in a proclaimed district shall in addition keep a true and correct register, which shall be available for inspection by any inspector, and such register shall contain :—

(a) The names and particulars of all owners of cattle kept on such land ;

- (b) The number of cattle on such land owned by each cattle owner; and
- (c) The number of cattle belonging to each cattle owner cleaned on each cleaning day.

Provided that if the said landowner and cattle owner agree that the said cattle shall be cleaned by the landowner then and in such case the landowner may charge the cattle owner such sum for cleaning such cattle as may be prescribed in that behalf under the Diseases of Animals Ordinance and *Cap. 157*. such sum may be recovered as a civil debt.

(2) It shall be unlawful for any cattle owners as aforesaid to refuse or fail to submit the said cattle for cleaning in accordance with the provisions of this section.

10. Should any person, company or co-partnership own land with cattle thereon, the property of such person, company or co-partnership, and be absent from or not have a representative or agent in this Colony having authority to carry out the terms of this Ordinance, any veterinary officer may authorise the due performance of the terms of this Ordinance in such manner as he may deem expedient, and any expenditure thereby incurred shall be recoverable by the Chief Veterinary Officer as a civil debt. Absent landowners with cattle on land.

11. (1) An inspector may :—

- (a) Require any landowner in a proclaimed district to construct a dipping tank or tanks of an approved design on the land of such landowner or may require such landowner to make efficient by repair or otherwise any existing dipping tank or tanks on such land at the expense of such landowner.
- (b) Require the Local Native Council or other native authority of a proclaimed native district to construct a dipping tank or tanks of an approved design at such suitable place or places as may be approved by the inspector or may require such Local Native Council or other native authority to make efficient by repair or otherwise any existing dipping tank or tanks at the expense of such Local Native Council or other native authority :

Construction and repair of dipping tanks compulsory.

Provided that nothing in this sub-section contained shall be deemed to prohibit the erection of one or more dipping tanks for the common use of two or more landowners or cattle owners with the approval of a veterinary officer.

(2) For the purposes of this section an inspector may enter upon any holding and may give written notice to the landowner or Local Native Council or other native authority to erect any tank or tanks or to execute any repairs within a period to be specified in such notice and in default of compliance with the terms of such notice the inspector may proceed to carry out such erection or execute such repairs and may recover the cost thereof from such landowner or Local Native Council or other native authority as a civil debt.

(3) Any landowner or cattle owner who shall refuse or neglect or fail to comply with the terms of any notice given by an inspector under the provisions of this section shall be guilty of an offence.

Orders and notices to native authorities to be given through District Commissioners.

12. All orders or written notices given under sections 6, 7 or 11 of this Ordinance by the Chief Veterinary Officer or an inspector to the Local Native Council or other native authority of a proclaimed native district shall be communicated to such Local Native Council or other native authority through the District Commissioner.

Advances by Land Bank or from other public funds to defray cost of erection of dipping tanks.

13. (a) Any landowner or Local Native Council or other native authority may on application receive an advance to defray the cost of construction or repairs to any dipping tank or tanks which he may be required to erect or repair under the provisions of section 11 or which he may have already erected on or after the 1st day of June, 1928.

(b) Advances for the purposes of this section may be made from—

- (i) the Land and Agricultural Bank of Kenya, or
- (ii) such other public funds as the Legislative Council may set aside for that purpose.

Interest on cost of construction of dipping tank payable by tenant and cost and interest payable by purchaser.

14. When any dipping tank is constructed in a proclaimed district by any landowner :—

- (i) Upon land held by any person as a tenant, such tenant shall pay yearly during the continuance of his lease the interest upon the cost of such construction : Provided, however, that no tenant the unexpired term of whose lease does not exceed one year shall be liable to pay such interest.

- (ii) Upon land otherwise lawfully occupied by any person such person shall pay yearly during the continuance of such occupancy the interest upon the cost of the said construction and on the conveyance by the land-owner to such person of the title to such land such person shall pay in augmentation and as part of the purchase money the cost of such construction.

15. (1) In order to facilitate the movement of cattle in proclaimed districts and proclaimed native districts the Governor may provide dipping tanks in suitable places for the common use of cattle owners and may charge such fees for the cleaning of cattle in such tanks as may be prescribed in that behalf under the Diseases of Animals Ordinance.

The Govern-
ment may
provide dipping
tanks in
townships and
to facilitate
movement of
cattle and
may require
municipal or
local authority
to construct
dipping tanks.
Cap. 157.

(2) The Governor may in proclaimed districts and proclaimed native districts provide dipping tanks in townships, not being townships under the control of a municipal or local authority, for the common use of cattle owners and may charge the fees prescribed in the last preceding sub-section for the cleaning of cattle in such tanks.

(3) In proclaimed districts or proclaimed native districts the Governor may require municipal or local authorities to provide dipping tanks for the common use of cattle owners within areas under the control of such municipal or local authorities and such municipal or local authorities may charge the fees prescribed by sub-section (1) of this section for the cleaning of cattle in such tanks.

16. In every township or area in the control of a municipal or local authority in which dipping tanks have been constructed in accordance with the provisions of the preceding section, the District Commissioner or such municipal or local authority shall keep a true and correct register, which shall be open for inspection by an inspector, and such register shall contain—

Township and
municipal or
local authority
to keep
register.

- (a) the names and particulars of all owners of cattle within each township or area;
- (b) the number of cattle in such township or area owned by each cattle owner;
- (c) the number of cattle belonging to each cattle owner cleaned on each cleaning day.

Governor
may appoint
analysts.

17. The Governor may by notice in the Gazette appoint suitable persons to be analysts for the purposes of this Ordinance and may by such notice prescribe the fees or remuneration, if any, to be paid to such analysts.

Procedure on
taking samples.

18. (a) The following procedure shall be followed by an inspector on the taking of a sample of the cleaning solution from any dipping tank :—

- (i) He shall first notify the owner of such dipping tank of his intention to take such sample.
- (ii) He shall divide the sample taken into three parts placing each part in a separate bottle and shall seal and appropriately label each such bottle.
- (iii) He shall then deliver one such bottle to the owner, retain one bottle for possible future comparison and shall deliver the third bottle to the analyst for analysis of the said sample.

(b) Any cattle owner or landowner in any proclaimed district or proclaimed native district who shall use for the cleaning of any cattle any solution which on analysis fails to conform to the standard prescribed for an effective tick destroying agent shall be guilty of an offence.

Tick-
destroying
agent sold
must conform
to prescribed
standard.

19. It shall be unlawful for any person to sell or offer or expose for sale as an effective tick destroying agent any article or fluid which does not conform to the standard prescribed under this Ordinance.

Certificate of
analyst to be
evidence.

20. In any proceedings under this Ordinance a certificate of analysis under the hand of an analyst shall be evidence of the facts therein stated.

Penalties.

21. In a proclaimed district or proclaimed native district—

- (a) any cattle owner who shall fail or neglect to clean his cattle in accordance with the provisions of this Ordinance, notwithstanding that such cattle are free from tick infestation, or

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Cattle Cleansing

No. XXXII.

- (b) any person who shall hinder or impede or attempt to hinder or impede or who shall disobey the lawful orders of an inspector in the execution of his duties under this Ordinance,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or in default of payment of such fine to imprisonment of either description for a period which may extend to one year.

22. Any person who shall contravene any of the provisions of this Ordinance, for which contravention no special penalty has been provided, shall be guilty of an offence and shall on conviction be liable to a fine of twenty pounds, and in default of payment of the said fine to imprisonment of either description for a period which may extend to three months. General penalty.

23. The Governor in Council may make Rules— Rules.

- (a) prescribing the form of certificate of analysis to be issued under this Ordinance;
- (b) generally for the better carrying out of the objects and purposes of this Ordinance.

24. The Cattle Cleansing Ordinance (Chapter 158 of Repeal. the Revised Edition) is hereby repealed.

No. 33 OF 1929.

Date of assent.

[31ST DECEMBER, 1929.]

**An Ordinance to Provide for the Holding of
Investigations in Cases of Fire.**

Date of
commencement.

31st December, 1929.

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 Fire Inquiry
Ordinance, 1929 ”.

Police officer
to repair to
any fire and to
make due
inquiry into
cause thereof.

2. Whenever any fire causing injury to person or
property shall take place in any part of the Colony,
it shall be the duty of the officer of police to whom such fire
shall first become known to proceed himself or to send some
other police officer forthwith to the spot where such fire
shall have occurred, and the officer who shall so proceed to
the spot, after performing such services as he may be required
to perform in the due execution of his duty as an officer of
police, shall make all due inquiry into the origin or cause of
such fire.

To receive
statements of
any person able
to give
information.

3. Such officer of police shall receive the statements of
any person who is able to give information respecting such
fire.

To fill up soon
after, form
in Schedule.

4. Such officer of police shall further, so soon after as
he conveniently can, fill up the form given in the Schedule
to this Ordinance, and shall attach thereto the substance of
any information given to him as to the origin or cause of the
fire.

To forward
form to
Commissioner
of Police and
magistrate.

5. Such officer of police shall so soon as possible,
forward to the Commisisoner of Police and to the magistrate
of a subordinate court of the first or second class exercising
jurisdiction in the district in which such fire shall have taken
place, copies of the form filled up by him under section 4
of this Ordinance.

1929

Fire Inquiry

No. XXXIII.

6. The magistrate to whom the said form shall have been transmitted shall, if he think fit, or if information on oath is made to the effect that the informant has reasonable grounds for believing that the fire was unlawfully and maliciously set, hold an investigation into the origin or cause of the fire so reported :

Holding
inquiry.

Provided that the magistrate shall hold such an investigation if so directed in writing by the Attorney General.

7. Such investigation may be held at such time and place as the magistrate may direct, and for the purposes of such investigation the magistrate shall have power to enter together with any witnesses on the land on which the fire occurred.

Time and
place of
holding
investigation.

8. It shall be lawful for the magistrate to issue summonses free of charge to any witnesses that he may deem proper to attend any such investigation at such place as the magistrate may fix, any such summonses to be served in the same manner as are other summonses issuing from the subordinate courts, and any person disobeying any summons may be proceeded against in like manner and be subject to the like penalties as provided for in the Criminal Procedure Ordinance, and the provisions of such Ordinance generally which relate to inquiries into cases triable by the Supreme Court shall, so far as is possible consistently with the provisions of this Ordinance apply to proceedings under this Ordinance.

Magistrate to
summon
witnesses
free of cost.
Summons
governed by
the Criminal
Procedure
Ordinance.

Cap. 7.

9. All evidence given before a magistrate in virtue of this Ordinance, shall be given upon oath, and shall be taken down by the magistrate in the same manner as the depositions of witnesses on inquiry into cases triable by the Supreme Court.

Evidence on
inquiry to
be on oath.

10. The magistrate shall after making such an investigation as aforesaid forward a certified copy of the proceedings to the Colonial Secretary for the information of the Governor, and a certified copy of the proceedings may be obtained by any member of the public from the magistrate holding the investigation upon payment of the usual fees charged for making copies of documents as laid down in the table of Court fees.

Magistrate to
forward result
of investigation
to the Colonial
Secretary.

False witnesses liable to be indicted for perjury.

Nothing to prevent any person being charged with cause of fire, nor is any person, except one charged with having set the fire, entitled to refuse to give evidence.

Duties of police officers to be carried out by tribal police in areas where there are no police.

11. Any person giving false evidence at any investigation held under the provisions of this Ordinance shall be deemed guilty of wilful and corrupt perjury and shall be liable to be proceeded against and punished accordingly.

12. Nothing in this Ordinance shall in any way prevent any person from at any time being charged with having caused any fire, nor shall anything in this Ordinance entitle any person, save and except any person against whom a charge shall have been laid for having maliciously caused the fire about which the inquiry is held, to refuse to answer any question put by the magistrate, as to the cause of such fire; but no statement or answer made by any person under this Ordinance shall be admissible in evidence in any proceeding either civil or criminal against such person, save and except in any criminal proceeding for perjury committed under this Ordinance.

13. Whenever any fire causing injury to person or property shall take place in any district or area of the Colony in which there are no police other than tribal police, then and in such case the duties imposed upon an officer of police under sections 2 and 3 of this Ordinance shall be carried out by a tribal police officer, who shall as soon as possible make his report to a magistrate of a subordinate court of the first or second class exercising jurisdiction in the district.

THE SCHEDULE.

(Section 4.)

FIRE REPORT FROM DISTRICT.

Name of District.	Name of estate or place where fire occurred.	Date of fire.	At what hour reported, and at what hour extinguished.	Whether supposed to be accidental or otherwise.	Description and amount of property destroyed, and supposed value thereof.	How many police present.	Any other remarks.
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.....
Signature of officer of police.

1929

Maintenance Orders Enforcement

No. XXXIV.

No. 34 OF 1929.

[31ST DECEMBER, 1929.] Date of assent.

**An Ordinance to Amend the Maintenance Orders
Enforcement Ordinance.**

31st December, 1929.

Date of
commencement.

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

1. This Ordinance may be cited as “ the Maintenance Orders Enforcement (Amendment) Ordinance, 1929,” and shall be read as one with the Maintenance Orders Enforcement Ordinance (Chapter 169 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Short title.

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

Repeal and
replacement of
section 10 of
the Principal
Ordinance.

“ 10. Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any British possession or any territory under His Majesty’s protection or any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty’s Government in the United Kingdom of Great Britain and Northern Ireland, or in any other part of His Majesty’s dominions, for the enforcement within such possession, protectorate or territory of maintenance orders made by courts in the Colony, the Governor may by proclamation extend this Ordinance to such possession, protectorate or territory and this Ordinance shall thereupon apply in respect of such possession, protectorate or territory as though the reference to England or Ireland were references to such possession, protectorate or territory and the references to the Secretary of State for the Colonies were references to the Governor of such possession, protectorate or territory.”

No. XXXV.

Water

1929

No. 35 of 1929

Date of assent.

[31ST DECEMBER, 1929.]

An Ordinance to make Provision for the Employment and Conservation of Waters and to Regulate Water Supply, Irrigation and Drainage.

Date of commencement.

By Proclamation.

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

PART I.

PRELIMINARY.

Short title.

1. This Ordinance may be cited as “the Water Ordinance, 1929.”

Definitions and interpretations of terms.

2. In this Ordinance, unless inconsistent with the context or subject-matter, the following expressions shall have the meanings hereby assigned to them, that is to say :—

“Applicant” means any person who has applied for a water right under this Ordinance.

“Authorisation” means an authorisation to construct works under this Ordinance.

“Authorised” means authorised under the provisions of this Ordinance or of any Rule or notice thereunder.

“Body of water” means water contained in, or flowing in, a spring, stream, natural lake, or swamp, or in or beneath a watercourse, and includes the water diverted or abstracted therefrom, or stored therein, by means of works under a licence, but shall not include—

- (a) the water in a swamp, the boundaries of which are wholly within the boundaries of the land owned by any one landholder and which do not cross or abut against the boundaries of the said land, and to or from which no stream extending beyond the boundaries of the said land flows, either continuously or intermittently;

- (b) the water in a spring, which is situated wholly within the boundaries of the land owned by any one landholder and which does not naturally discharge water into a watercourse extending beyond the boundaries of the aforesaid land or abutting on its boundaries.

Provided that this definition shall be subject to the provisions of section 86 of this Ordinance.

“ Company ” means any incorporated or limited company, the object and powers of which extend to or include the construction or operation of works for the exercise of a water right.

“ Department ” means the Public Works Department

“ Develop ” means make available for beneficial use

“ Director ” means the officer for the time being appointed to the post of Director of Public Works.

“ Easement ” means the right to occupy so much lands of another as may be necessary for, or incide the construction and/or maintenance of authorise and/or the exercise of a water right.

“ Flood water ” means any water flowing in a excess of the normal flow.

“ Irrigation ” means the practice of causing flow upon or spread over or under the surface agricultural purposes.

“ Landholder ” in relation to land means the registered owner of the land, or the person to whom the land is vested by law, or any person to whom a mining claim has been granted under the Mining Ordinance, 1925, or any Ordinance amending the same, and shall include :—

- (a) Any person lawfully holding or occupying land in accordance with the provisions of any law empowering the Government to allot land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions.
- (b) Any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land.

Cap. 147.

"Land Surveyor" means a surveyor licensed under Rules made under the Land Surveyors Ordinance or any Ordinance amending or replacing the same.

"Licence" means the document conveying a water right.

"Licensee" means the holder of a licence under this Ordinance.

"Normal flow" means the ordinary flow at any particular point of a stream as certified by the Water Board from time to time to be the normal flow at that point.

"Operator" means any person authorised to construct works under this Ordinance by authorisation or to divert, abstract, or use water by licence, and includes an applicant.

Cap. 140.

"Permit" means any permit issued under section 145 of the Crown Lands Ordinance, and shall include a water permit or written permission to divert, abstract, obstruct, or use water or to construct works, which has been signed by the Director or by any of his predecessors in office or on his or any of their behalf.

to
works

"Persons" means any person or body of persons or body corporate, and their heirs, executors, administrators, or other legal representatives of such person, to whom the context can apply according to law.

at

"Prescribed" means prescribed under the provisions of this Ordinance, or of any Rule or notice thereunder.

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"Qualified engineer" means a person registered under this Ordinance as a qualified engineer.

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wh
inin

"Riparian," as applied to land, means abutting on or traversed by a body of water.

"Spring" means water emerging from beneath the surface of the ground.

"Stream" means the water contained in a watercourse, and includes a river.

"Water Board" means the Water Board established under this Ordinance.

"Watercourse" means a natural channel or depression in which water flows, either continuously or intermittently :

Provided that this definition shall be subject to the provisions of section 86 of this Ordinance.

"Water right" means the right to divert, abstract, obstruct, store or use water or to drain lands as granted and held by licence under this Ordinance, and includes the right to construct and maintain works authorised under this Ordinance for the purposes of the licence.

"Works" means any structure, apparatus, contrivance, device or thing, for carrying, conducting, providing, or utilising water, excepting hand utensils or such other contrivances as may be specified in the Gazette by order of the Water Board.

3. This Ordinance shall apply throughout the Colony and shall come into operation on such day as the Governor shall by proclamation in the Gazette appoint. Application and commencement.

PART II.

WATER RIGHTS.

4. (1) The water of every body of water is hereby declared to be the property of the Crown, and its control is hereby declared to be vested in the Governor in Council on behalf of the Crown, subject to the provisions of this Ordinance. Water the property of the Crown and vested in the Governor in Council.

(2) This section shall not apply to any part of the Protectorate of Kenya which is now or may hereafter be held on lease from His Highness the Sultan of Zanzibar.

5. The right to the use of every body of water is hereby declared to be vested in the Governor in Council, and no person shall divert, abstract, obstruct or use water from a body of water, otherwise than under the provisions of this Ordinance. Right to use water vested in the Governor in Council.

6. After the coming into operation of this Ordinance, no conveyance, or lease of land, or any other instrument of whatsoever description dealing with land, including any mining lease, or mining claim, shall convey to or vest in any landholder any property or right, or interest or privilege, exclusive or otherwise, with respect to any body of water, and any provision in any document purporting to convey or vest in any landholder any such property, right, interest or privilege shall be void and of no effect, and, except for any right specifically granted by, or on behalf of, Government in any Right to use water may be acquired only under this Ordinance.

Cap. 140.

title under the Crown Lands Ordinance, 1902, or under the Crown Lands Ordinance, or in any written agreement, no right shall exist or be acquired, or be deemed to have been acquired (other than by a revocable authority conveyed by permit) by any person by length of usage, or otherwise than as it may be acquired or conferred under this Ordinance.

Purposes for which a water right may be acquired.

7. The purposes for which a water right may be acquired are the following :—

- (a) Domestic purpose, which shall mean and include the provision and employment of water for household and sanitary purposes, the watering and dipping of stock, and the essential requirements of such farming operations as are not of an industrial nature.
- (b) Public purpose, which shall mean and include the provision and employment of water for municipalities, townships, villages, and communities, and for all reasonable demands for steam raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power.
- (c) Minor irrigation purpose, which shall mean and include the provision and employment of water for irrigation of land used for orchards, gardens, nurseries, or land for other requirements in connection with farming operations not exceeding five acres in area.
- (d) Industrial purpose, which shall mean and include washing and treating of coffee, vegetable fibre, or other agricultural or mineral products, or the essential requirements of other industries and mining.
- (e) Power purpose, which shall mean and include the provision and employment of water for the development of power.
- (f) General irrigation purpose
- (g) Other purpose.

8. (1) Applications for water rights for the same purpose or for different purposes shall receive consideration in accordance with the circumstances of each case, but no water right shall be granted which in the opinion of the Water Board would be likely to interfere with the essential domestic requirements of riparian land according to this Ordinance, without the authority of the Governor in Council. Riparian amenities safeguarded.

(2) The Water Board may reserve such part of the flow of a stream as in its opinion is required for domestic purposes on lands riparian to the stream, and where apportionment of such part amongst landholders is required to be made the Water Board shall determine such apportionment after having taken into especial consideration the length of frontage of each holding on the stream.

9. A licence shall not be required for the abstraction or use of any water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction or use is made without the employment of works : When licence not required.

Provided that in the case of small bodies of water or during drought the Water Board may in its absolute discretion by written order require a riparian landholder to allow to pass to lower riparian landholders such proportion of the flow of a stream as appears to the Water Board to be equitable, and may prohibit any practice which in the opinion of the Water Board causes an undue reduction of the flow of a stream, and any person who fails to obey an order of the Water Board given under this section shall be guilty of an offence against this Ordinance.

10. In all cases of proposed diversion, abstraction, obstruction, storage, or use of water from a body of water, other than those referred to in the last preceding section, application must be made in the manner prescribed by this Ordinance for a licence for the diversion, abstraction, obstruction or storage of water. The execution, construction, erection or employment of works, the diversion, abstraction, obstruction or storage of water from or in a body of water, except as hereinbefore provided, without, or prior to, the receipt of an authorisation, licence or sanction under this Ordinance, shall be an offence under this Ordinance. When licence is required.

Classification
of projects.

11. Projects for the use of water, or for the drainage of land, are of five classes, namely :—

State projects.

Private projects.

Community projects.

Public projects.

Urban projects.

State projects
take prece-
dence over all
others.

12. (1) Whenever the Governor in Council, on the advice of the Water Board established under this Ordinance, may have decided upon a project to use, or may consider it desirable in the public interest to reserve the right to use, the water, or portion of the water, of any body of water, or upon a project for draining land, such State project or reservation shall take precedence over all other projects for the use of such water, or drainage of such land.

(2) Licences may be issued, on such terms as the Water Board may in each case specify, for water rights for use of water in an area, treated or to be treated, in whole or in part, as a State project, or for use in connection with a body of water affected by a State project, until such time as such water is required for the State project, or when and for as long as water is available in excess of the requirements of the State project.

(3) The Governor in Council may from time to time, on the advice of the Water Board, publish in the Gazette a notice setting forth the land required for the development of any State project, and Crown lands required for such State project may by notice in the Gazette be reserved from sale or other disposal.

(4) When any of the land required for the State project has been sold, leased, allotted, or otherwise disposed of by the Crown, prior to publication of the notice as hereinbefore prescribed in the Gazette, the procedure for the acquisition of the land so disposed of shall be in accordance with the law in force for the time being relating to the acquisition of land for public purposes.

(5) The reservations in this section may be exercised by the Governor in Council notwithstanding that the construction of the projected works may not be done by Government or paid for out of Government funds.

13. (1) Private projects are those which concern the use of water or the drainage of swamps within the limits of the land of the operator, whether the works are constructed entirely on the land of the operator, or partly on the land of other persons. **Private projects.**

(2) Two or more operators who have a common interest in the employment of water or in the drainage of swamps may unite in an association for the exercise of a water right under a licence for a private project. Any application for a water right in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which such an association proposes to exercise the water right must be specified in writing and submitted to and approved by the Water Board, as must also any modification of such rules at any later date. **Private project conducted by an association of operators.**

(3) The proportion of participation shall be presumed to be equal between members, unless the contrary is laid down in rules made by the association, adopted as provided in the preceding sub-section.

(4) The grant of a water right to an association of operators under the provisions of this section shall be subject to such terms governing action to be taken during operation, upon withdrawal of members of the association, or upon dissolution of the association, as the Water Board may prescribe, or as may be prescribed in Rules made under this Ordinance.

14. Community projects shall be such as are conducted on lines specified in Rules made under this Ordinance by a community of landholders operating under a water right for one or more of a series of authorised purposes connected with the use of water or with drainage or reclamation, entirely or for the greater part within their own holdings, not being public or urban projects. **Community projects.**

15. Public projects shall include projects which involve the supply of water or of electrical energy derived from the energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor. **Public projects.**

Urban projects. **16.** Urban projects shall mean projects undertaken, operated or maintained by a municipal authority, corporation, or other body, for the supply of water to municipalities or townships, and shall include projects, howsoever originated and constructed, which are taken over and operated by a municipality, corporation, or other water works authority, for the supply of water to a municipality or township.

**Water Board
to determine
class of
project.**

17. It shall be lawful for the Water Board to determine to which class any proposed project shall be deemed to belong.

**Constitution
of Water
Board.**

18. (1) For the purpose of carrying out the provisions of this Ordinance, a Water Board shall be established by the Governor in Council.

(2) The Director shall be Chairman of the Water Board, and the members thereof shall be the following persons, namely :—

- (a) The Attorney General;
- (b) The Chief Native Commissioner;
- (c) The Commissioner for Local Government, Lands and Settlement;
- (d) The Director of Agriculture;
- (e) The Surveyor General,

and four representatives of the public who shall be appointed from time to time by the Governor by notice in the Gazette :

Provided that, in the case of absence or inability to attend, the Chairman and any of the officers included in paragraphs (a), (b), (c), (d) and (e) above may be represented by a deputy.

(3) The Water Board shall meet at such times and places as the Chairman shall direct, but shall ordinarily meet in Nairobi.

(4) The powers, duties, and obligations of the Water Board may, at any time, be exercised by a quorum thereof consisting of not less than half the number of members.

(5) At any meeting of the Water Board the Chairman shall preside, and in his absence his deputy shall act as Chairman, and in the case of the absence of the Chairman and his deputy, the Board shall elect one of the members as Chairman.

(6) The four representatives of the public above referred to shall hold office during the Governor's pleasure.

(7) The Chairman presiding at a meeting shall, in the event of an equal division of votes, have a second or casting vote.

(8) No member of the Board shall be allowed to vote on any matter in which he may have an interest, pecuniary or otherwise.

(9) The Board may from time to time make Rules regulating its procedure.

(10) The executive work and requirements of the Water Board shall be carried out by such engineers, surveyors, inspectors and clerks or other staff of the Department as may be specially appointed for the purpose of the administration of this Ordinance, and by such other persons as the Director may approve.

(11) There shall be made such hydrographic surveys and investigations as will ensure that adequate knowledge is secured of the varying flow of streams, the alteration of the level of the water of lakes, the capacity of power reaches, and the probable future demands for water, to enable the Water Board to apportion water rights equitably, and to make such reservations as may be required in the future for public purposes and applications for water rights, as well as to ensure that the requirements of riparian landholders as regards water for domestic purposes are adequately protected.

(12) Any of the powers, duties, or obligations vested by this Ordinance in the Water Board, except the power to grant, alter or cancel water rights, easements, licences or sanctions, may, by resolution of the Water Board, be deputed by the Water Board to the Director.

19. (1) The Governor may, on the advice of the Water Board, appoint District Water Boards to assist in the administration of this Ordinance in any areas of the Colony.

Appointment
of District
Water Boards.

(2) The constitution, membership, chairmanship, meetings, duties, and areas of operation of a District Water Board shall be as provided by Rules made under this Ordinance.

(3) A District Water Board shall be advisory to the Water Board on matters pertaining to applications for water rights or the alteration thereof in any part of its area.

(4) The powers of a District Water Board shall be such powers as may be granted by Rules made under this Ordinance.

(5) The Governor may, on the advice of the Water Board, appoint any local authority or body of persons with their concurrence, to exercise within any area such of the duties and powers of a District Water Board as he may decide.

Rights of
holders of
pre-existing
permits.

20. (1) A holder of a permit, not being a permit terminating on the 31st day of December of the year of issue or renewal, who has made, and is, at the time of the coming into operation of this Ordinance, making beneficial use of water in conformity with the terms of the said permit, if application be made by him to the Water Board for a water right under this Ordinance within six months after the date of the coming into operation of this Ordinance and after receipt by the Water Board of any particulars it may require regarding the diversion, abstraction, obstruction or use of the water, or other matters pertaining thereto, shall be entitled to receive a licence under this Ordinance :

Provided that the licence shall authorise the diversion, abstraction, storage, or use of a discharge or the construction of works or the diversion, abstraction, storage or use of a proportion of the flow of a stream or all or any of them, which shall be determined by the Water Board after consideration of the discharge or proportion of the stream which at the time of the coming into operation of this Ordinance is being diverted, abstracted and beneficially used, and of the works constructed, and of the probable future utilisation of the body of water by other users, and shall be issued under such terms and conditions as may be decided by the Water Board :

Provided also that if in the opinion of the Water Board a licence should not be issued until after hydrographic survey or other investigation has been made, or if for any other reason

the Water Board deems it desirable to delay the issue of a licence, the Water Board may issue a sanction under section 88 of this Ordinance in lieu of the said permit.

(2) When a permit or a renewal thereof terminating on the 31st day of December has been issued and is being made use of in conformity with the terms thereof, a sanction may be issued by the Water Board under section 88 of this Ordinance in lieu of the said permit.

21. (1) When a period of twenty-four months after the coming into operation of this Ordinance shall have elapsed, or such further period as may be determined by the Governor in Council by notice in the Gazette, all diversions or abstractions of water from a body of water or obstruction of a body of water effected under any authority or law whatsoever, other than the authority of this Ordinance, except in so far as they be or become lawful under the terms of this Ordinance, shall cease to be lawful.

Termination
of permits.

(2) Every person who has been, prior to the coming into operation of this Ordinance, diverting, or abstracting, or obstructing water, or allowing water to be diverted, abstracted, or obstructed, within the boundaries of land held by him under any terms of tenure, shall either discontinue to divert, abstract or obstruct water, and, if required by the Water Board, cause to be removed any works constructed, maintained or used by him which cause to be diverted or abstracted or which obstruct or impede the flow of any body of water, or shall, within six months from the date of the coming into operation of this Ordinance, or within such further period as may be determined by the Governor in Council by notice in the Gazette, apply for a water right under this Ordinance, and shall supply such particulars as may be required by Rules made under this Ordinance or as the Water Board may specify regarding the works, diversion and use of the water.

22. (1) Any person contemplating an application for a water right under this Ordinance may, upon submitting in the manner prescribed by Rules made under this Ordinance, a general description of his proposals and a list of lands which might be affected by the construction and operation of the work in connection therewith together with the names and addresses of the holders of the same and upon payment of the

Authority to
enter upon
lands for
purposes of
survey, etc.

prescribed fee, obtain from the Water Board authority to do the necessary preliminary investigation in connection with the location of such work, which authority may prescribe a time limit within which such investigation is to be completed, and after he has obtained such authority he may with such assistants as are necessary enter into and upon any public or private lands to take levels, make surveys, and do other necessary work in connection with such location, doing no damage.

(2) The Water Board shall issue no such authority until it has served a notice on each landholder that application to enter his lands has been made by a stated person.

(3) The grant of such authority shall in no way be deemed to authorise the doing of damage upon any lands entered upon, and if any damage is done, compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration under the Arbitration Ordinance.

Cap. 18.

Application for
a water right.

23. Every applicant under this Ordinance shall file with the Water Board the following documents in duplicate, accompanied by the prescribed fee :—

- (a) An application on a form provided, in which the applicant shall set forth his name, residence and occupation, the number and locality of his holding, or the area of a mining lease or mining claim, the land where water is required to be used, a description of the body of water from which the water required is to be diverted, abstracted, stored or used, the point of diversion, abstraction, storage, or use, the purpose for which water is required, an estimate of the normal and minimum flow of the stream from which diversion or abstraction or storage is applied for, a statement whether a proportion of the normal flow or flood water or both is required, a description of the character and size of the works to be constructed or installed, together with all other relevant particulars which may be asked for in the form of application or subsequently required for a full understanding of the proposals of the applicant.

- (b) A request for the right to construct any work referred to in the application across any road, or road reserve, if any, which may be affected by such works.
- (c) A general map drawn in indian ink or by means of other indelible process on tracing linen or other substantial material to such a scale as will allow all requisite details to be legibly recorded, signed by the applicant, showing the body of water, the position of the intake, forebay, flume, dam, power house, reservoir, pipes, canals, spillways, or other works and lands, if any, which may be affected, the names of the landholders, and the Land Registration numbers and boundaries of the farms affected by the proposed works.
- (d) Such plans as may be required in Rules made under this Ordinance or by the Water Board.

24. For the requirements specified as applying to applications for water rights involving the diversions or use of water there shall be substituted in connection with applications for water rights involving reclamation, drainage or other proposals, such particulars or proposals as the Water Board may specify.

Application for right involving drainage or reclamation.

25. The application, map, and plans (if any) filed as above prescribed, or a true copy thereof, shall be open for examination by the public at all times during office hours at the office of the Director, and at any other place deemed desirable by the Water Board.

Application and plans to be open for inspection.

26. Upon receipt by the Water Board of the application together with all particulars, map, and plans (if any) which it may have required the applicant to furnish, to enable a full understanding of the applicant's proposals, either as originally submitted or as varied, to be arrived at, and if in its opinion the proposed water right would be likely to be in the public interest, or not adverse to it, it shall register the application, and shall endorse its conditional approval on both copies of the application, map, and plans (if any) connected therewith, and shall return one copy of each to the applicant.

Approval of application.

Procedure if
the application
for water right
is approved.

27. (1) If the application, map and plans (if any) have been conditionally approved as provided in the last preceding section, the Water Board shall prepare a draft notice setting forth :—

- (a) A statement that the application has been filed with the Water Board, and the date of registration of the application, and that objections may be filed with the Water Board within sixty days from the date of the first publication of the notice.
- (b) The name and address of the applicant.
- (c) The place at which the water is proposed to be diverted, abstracted or impounded.
- (d) The place at which water is proposed to be used.
- (e) The purpose for which water is proposed to be used.
- (f) General particulars of the proposed works.
- (g) Any information considered necessary by the Water Board to enable the applicant's proposals to be understood.

(2) The draft notice shall be transmitted to the applicant and the applicant shall, if he desires to acquire a water right, within fifty days from the date of receipt of the notice, cause it to be published in some newspaper, which may be named by the Water Board, published in the Colony, and having circulation in the locality in which the proposed works would be situated, not less than on two occasions within one fortnight, and in two successive issues of the Gazette.

(3) In any case where the application relates to the diversion, obstruction or use of a body of water within, abutting on or flowing into a Native Reserve, a copy of the draft notice shall be sent by the Water Board to the District Commissioner of the district which might be affected, who shall, if in his opinion the interests of any native would be affected, cause such native to be informed of the terms of the application.

(4) If it appear to the Water Board to be in the public interest so to do, it may require the applicant to publish the notice in the same newspaper and in a second newspaper having circulation in the locality of the proposed works, on four occasions or less, within thirty days or may require such notice to be published in a modified or altered form.

(5) An objection to the application, if any, shall be filed with the Water Board in duplicate within sixty days from the date of the first publication of the notice or of the modified or altered notice, if modification or alteration has been required, and shall set forth the address of the objector, the specific grounds for objection, and a copy of the objection shall be forthwith served by the objector on the applicant.

(6) The Water Board shall consider the objection, and if in its opinion the alleged grounds of objection are not *prima facie* sufficient to warrant an enquiry, it shall so decide, and shall notify the objector in writing of such decision, but if it considers the alleged grounds sufficient to warrant public enquiry, it shall fix a day for holding the enquiry.

(7) The Water Board may, for the purpose of such hearing, summon and examine witnesses upon oath or affirmation, may adjourn such hearing to obtain further evidence, or until the applicant has submitted plans, or altered plans, or other documents, may dismiss the objection, or may direct the applicant to amend his application, or may dismiss the application.

28. If after receipt by the Water Board of such application, map and plans (if any) as may be prescribed, together with such full particulars of the applicant's proposals as it may have required, and if, in its opinion, the proposed water right would not be in the public interest, or would unduly interfere either with the undertakings of other operators or of riparian holders, the Board shall endorse its disapproval upon one copy of the application and any other necessary documents relating thereto, and shall state its reasons for disapproval, and shall return one copy of each document to the applicant.

Procedure if
application for
water right is
not approved.

29. (1) The application, map and plans (if any) shall be filed at the office of the Director, and if the application has been finally approved by the Water Board the Water Board shall authorise the construction of the works by authorisation, and may fix in the authorisation a time limit, within which the construction of the works is to be begun, and another within which it is to be completed.

Authorisation.

(2) The authorisation for the construction of works shall be a document, on a form prescribed by the Water Board, or in Rules made under this Ordinance, and there shall be endorsed thereon the number which the licence shall bear if or when issued to the operator on completion of the works in accordance with the authorisation and modifications thereof, if any, and to the satisfaction of the Water Board.

(3) No material deviation from the map or plans filed shall be made without written permission, and any question arising as to whether any deviation is material shall be decided by the Water Board.

Inspection of
works during
construction.

30. (1) Any works authorised under this Ordinance may, if the Water Board so determines, be constructed subject to inspection during construction by officers of the Department, and the cost of such inspection, or of such portion thereof as the Director declares to be necessary in the interest of the safety of life and property, may be required by the Water Board to be borne by the operator.

(2) No such inspection shall be held to imply Government guarantee of works constructed or to support or justify any claim whatsoever against Government in connection with the works.

Works to be
made secure.

31. Upon any inspection under the provisions of the last preceding section, the Water Board may order the operator to make any addition or alteration which it considers necessary for the security of any works, whether completed or in course of construction, and if such order is not complied with to the satisfaction of the Water Board within such period as may be specified by the Water Board, the authorisation may be cancelled or modified by the Water Board.

Water right
limited by
capacity of
works.

32. When any work for carrying, storing or using water is not of sufficient capacity to carry, store or use the quantity or discharge to which right has been acquired by the operator, his right shall be limited to the quantity or discharge which such work is capable of carrying, storing or using, and in case of dispute as to such quantity or discharge the Water Board may order an inspection of the work, and the licence may be issued by the Water Board for the quantity or discharge of water which the work is capable of carrying, storing or using in a beneficial manner.

33. (1) Upon the expiration of the time mentioned in the authorisation for the construction of works, or at any time before such date if the construction is sooner completed, the operator shall submit a completion certificate upon a prescribed form, whereupon an inspection may be made by an officer appointed for the purpose by the Water Board to ascertain that the works have been completed in accordance with the authorisation, that the easements, if any, for the works have been obtained, that agreements, if any, have been entered into for the supply of water for utilisation on lands which are not the property of the applicant or for drainage of lands, and that the works as constructed are of the required capacity :

Completion
certificate and
inspection.

Provided that if the work is not completed within the said time limit, a progress report shall be substituted for the completion report hereinbefore prescribed, and the operator may apply for an extension of the time limit of the authorisation, which extension may be refused or may be sanctioned upon such terms as the Water Board may prescribe.

34. (1) Upon completion of the works to the satisfaction of the Water Board, and in accordance with the terms of the authorisation or amended authorisation, the Water Board shall issue a licence to the operator to divert, abstract, use or store the discharge or quantity of water to which he is entitled and in accordance with the terms of the licence, and of the authorisation, or any approved modification thereof, and such licence shall bear the number accorded to the authorisation, with priority from the date on which the application, containing full details of the applicant's proposals together with such particulars, maps or plans as may have been required, was received by the Water Board.

Licence.

(2) A licence may be issued for a fixed period or otherwise as the Water Board may decide.

35. If at any time it is made to appear to the Water Board, after giving due consideration to future requirements for the development of land riparian to the body of water, that the water in any body of water is not all required for the reasonable and beneficial use of holders of land riparian to the body of water, and if in its opinion a proportion of the water can be more beneficially utilised on lands not riparian to the

Water for
non-riparian
lands.

body of water, it shall be lawful for the Water Board to authorise by licence the diversion of water on to non-riparian land within the catchment area or across the natural watershed of the river into any other catchment area.

Unless there is, in the opinion of the Water Board, some good reason for deciding otherwise, the applications for the use of the water on land within the same catchment area shall have preference over applications for the use of water on land not within the same catchment area.

Limitation of
water right.

23. The right of a licensee to divert, abstract, use or store water shall be limited to the quantity or proportion of the discharge of the stream, whether it be normal flow or flood discharge, granted by licence, and in accordance with the terms of the licence, or in accordance with other right lawfully exercised under the provisions of this Ordinance :

Provided that every licence shall be subject to cancellation or alteration by the Water Board by reason of waste of water, or non-use, misuse or partial use only of the water right granted, or non-compliance with the conditions of the licence, and if so cancelled or altered the water right shall thereupon be determined or be altered :

Provided also that no licence for a public project or urban project shall be cancelled or altered either in whole or part except by the Governor in Council, but in so far as an urban project licence is temporarily not required in whole or in part for the purpose for which it was issued, a licence for a definite period in respect of the same supply may be issued to any person upon application for a water right under this Ordinance.

Water Board
may prescribe
measuring and
controlling
devices.

37. (1) The Water Board may prescribe, in a licence, that the operator shall construct, fix, and maintain in a sound and efficient manner, weirs, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the quantity of water, or proportion of the flow of the stream, which the operator is authorised to abstract, divert, use or store, shall be abstracted, diverted, used or stored by the operator in exercise of the water right, or it may, subsequent to the issue of the licence, at any time require the licensee to construct, fix and maintain such weir, flume, sluice gates, valve or other controlling or measuring device.

(2) The Water Board may prescribe the design, materials and method of construction of such controlling or measuring device.

(3) Every licensee storing water in a reservoir shall, at the discretion of the Water Board, and according to plans approved by it, construct, fix and maintain flumes, weirs, sluice gates, or other controlling or measuring devices at points on the stream to be determined, and (if required so to do) on each and every stream, or body of water, discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below the reservoir, or both.

(4) If any licensee neglects or refuses to commence the construction or fixation of the said flumes, weirs, sluice gates, valves or other controlling or measuring devices, within three months after notice to do so by the Water Board, or to prosecute the said construction diligently, or to maintain the same satisfactorily, the Water Board may—

(a) construct, fix and maintain or cause to be constructed, fixed and maintained, the said flumes, weirs, sluice gates, valves or other controlling or measuring devices;

(b) open or cause to be opened the sluice gates, valve or outlet of a reservoir, or failing such outlet, demolish or cause to be demolished any works in order to provide an outlet, close or cause to be closed any canal or pipe or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as the Water Board may deem proper, until the said licensee shall construct, fix or maintain the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(5) All costs and charges in connection with the said operations shall be paid by the licensee, and if not so paid shall in addition to any other penalties provided under this Ordinance be recoverable as a debt due to the Crown, and if the licensee further refuses or fails to comply with the said requirements, the Water Board may cancel his licence.

Road crossings

38. (1) Any operator constructing any works under the provisions of this Ordinance shall during such construction keep open for safe and convenient travel all public roads and rights of way therefor publicly used as such, when they are crossed by, or interfered with by, such works, and shall, before water is admitted to such works, construct to the satisfaction of the Director, or at the Director's option refund to the Director the cost of construction by the Department or other roadway authority, of a substantial bridge with proper and sufficient approaches thereto over such works, and such railings, fences, guard posts, culverts, facewalls and other structures and appurtenances as the Director may declare to be necessary in the public interest and all such bridges, approaches and appurtenances shall thereafter be always maintained by the operator, while the water right is valid, or alternatively at the Director's option at the expense of the operator.

(2) The Department or other roadway authority may at any time on the order of the Director renew or alter such bridge or structures or works in connection therewith, and the operator shall pay, if so required by the Director, for such proportion of the renewal, alteration and maintenance thereof, or any of them, as is in the opinion of the Director rendered necessary or desirable in the public interest on account of the existence of the works of the operator :

Provided that an operator may appeal against an order of the Director or other roadway authority within 30 days of such order to the Governor in Council whose decision shall be final.

Efficient utilisation and procedure owing to abnormal conditions determined by Water Board.

39. Questions as to full, efficient and beneficial utilisation, as to adverse effect of works, or as to limitation of supply owing to abnormal conditions shall be decided by the Water Board, whose written decision shall be final, and binding.

Alteration of quantity of water authorised to be diverted by licensees.

40. (1) Whensoever it may be shown to the satisfaction of the Water Board that owing to drought or natural changes, increased demands on a body of water, or other causes, the diversion, abstraction, storage or use of the water authorised to be diverted, abstracted, stored or used by a licensee causes

inequity, and causes a shortage of water for domestic or other purposes which in the opinion of the Water Board should have priority, it may revise and alter the discharge or quantity of water which any licensee is authorised to divert, abstract, store or use, as appears to it equitable. The quantity so altered shall thereafter be the discharge or quantity which the licensee is authorised according to this Ordinance to divert, abstract, store or use.

(2) The Water Board may decide what compensation (if any) shall be paid and by whom it shall be paid in respect of any loss incurred by the putting into operation of the provisions of sub-section (1) of this section, subject to appeal to arbitration as provided for under section 74 of this Ordinance if an objection is lodged with the Water Board within thirty days of the date of the decision of the Water Board :

Provided that if it is decided that compensation shall be payable such compensation shall be recoverable as a civil debt.

41. (1) When issuing a licence, the Water Board shall specify, as far as practicable, the particular portion of any land, or the particular undertaking, to which the water right is to be appurtenant. Such water right shall thereupon, save as herein provided, be appurtenant to such portion of land or such undertaking, and the water right shall pass with any demise, devise, alienation, transfer or other disposition of the same, whether by operation of law or otherwise.

Water right
to be appur-
tenant to the
land for
which issued.

(2) When the land or undertaking to which the water right is appurtenant passes to another landholder or owner the said licence shall be surrendered to the Water Board for endorsement thereon of the name of the new landholder or owner.

(3) If the land affected by the works, and to which the water right is appurtenant, has been or is about to be divided in ownership, the licence shall be surrendered to the Water Board, and such new licence as may be issued by the Water Board shall be dependent upon the acquisition of such easements, if any, as may be required, and may be issued with such modifications of the original licence as in the opinion of the Water Board may be rendered necessary or desirable by the circumstances.

Licensee may
abandon.

42. Any licensee may, by notice in writing to the Water Board, abandon the whole or any part capable of separation of the water right acquired, and upon such abandonment the Water Board may direct such licensee forthwith to remove all or any works erected in connexion with such water right, and in the event of the refusal or failure of such licensee to remove such works the Water Board may remove all or any of such works, and may recover the cost of such removal from such licensee :

Provided that where any land or undertaking to which a water right is appurtenant is mortgaged or charged, no abandonment of such water right shall be effective without the consent in writing of the mortgagee or chargee.

Readjustment
of licence.

43. Every licence and water right shall be subject to subsequent readjustment by the Water Board after hydrographic survey of the body of water has been made, and after reasonable notice has been given to all parties affected. Such readjustment shall not affect the priority of the licence.

Change of
point of
diversion.

44. An operator may obtain permission from the Water Board to change the point of diversion or abstraction of the water used by him, or the position of the works, on giving such notice and complying with such terms as the Water Board may require or impose, and subject to the acquisition of such easements as may be required.

Apportion-
ment.

45. Whenever the holder of the land to which a water right is appurtenant desires to have the water apportioned between two or more parts of the land in respect whereof the water right was originally obtained, he may apply to the Water Board for an apportionment, and the Water Board, on its being proved to its satisfaction that the water rights of others will not be prejudiced or imperilled, may, after notice to all the persons interested or believed to be interested, amend the licence originally granted, or may issue two or more licences to conform to the apportionment authorised. Such new licences, issued in accordance with this section, shall not authorise in the aggregate, the diversion or storage of more water than the discharge or quantity authorised to be diverted, abstracted, stored or used by the original licence.

46. Any licensee holding two or more licences may mingle the waters authorised by such licences, and may construct works to carry and use such mingled water : Mingling waters.

Provided that the plans of such works shall be subject to the approval of the Water Board in all respects as new works are approved under this Ordinance, and that except as to the mingling of such waters, and the construction and maintenance of such works, the water right of the said licensee under the said licence shall in no wise be enlarged or altered.

47. The production of a licence or authorisation, or a copy thereof purporting to be certified by the Chairman of the Water Board shall, without further proof, be evidence in all courts of the matters and things therein mentioned. Licence as evidence.

48. Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purpose for which they were constructed, and so that no damage shall occur to any road, property or work in the vicinity; and any person aggrieved by the failure or neglect of such operator so to do, shall be entitled within a reasonable time after such failure or neglect has been discovered to serve the operator with notice thereof, and if the operator declines or fails to remedy any defect, inefficiency or neglect, it shall be competent to such person to institute an action to recover damage in respect of any loss sustained by him in consequence thereof. Works to be kept in repair.

49. (1) In the case of all water rights involving the irrigation of lands, provision shall be made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water by drainage or other works. Drainage of irrigated lands.

(2) Whenever in the opinion of the Water Board no provision or insufficient provision has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, the Water Board may order and require the operator to construct and maintain such works as will in the opinion of the Water Board cause such water to be so delivered.

(3) If any operator fail within a reasonable time to obey an order of the Water Board given under this section, his licence may be cancelled by the Water Board, and the water right shall thereupon become null and void, and he shall be guilty of an offence against this Ordinance.

Water not to
be released
without notice.

50. No water stored or penned back by any operator shall be released without reasonable notice being given to all persons whose property is liable to injury from the releasing of such water, and the operator shall not by reason of anything in this Ordinance contained be relieved from liability for any loss, damage or injury sustained by anyone arising from the release of such water.

Damage to
public works
to be made
good.

51. Every operator shall be liable for and shall make good, in such manner as the Director or any officer delegated by him may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and in the event of such works not being made good after notice so to do has been served on the operator by the Director, the Director may make good the works and recover the cost thereof in any competent court.

Authority to
Department
to interfere
with works.

52. Any officer of the Department or other person thereto empowered by the Governor engaged in the construction of any road or public works may, upon due notice to the operator, cross, divert or otherwise interfere with the work of such operator, and for such reasonable period as may be necessary, provided that he or they shall do as little damage as possible, and shall restore the work to a condition in which it will as speedily as possible fulfil its required purpose.

Operator must
produce
documents on
order of
Water Board.

53. Every operator, upon the written order of the Water Board, or any person authorised by the Water Board for that purpose, shall produce for inspection any licence, authorisation, map, plan, specification, drawing or other document relating to the works or to the water right of such operator or to the flow of water in the said works or in the body of water affected by the works.

54. Any operator whose licence or authorisation has been issued imperfectly or without compliance with all or any of the terms of this Ordinance governing the issue thereof or which contains some inaccuracy which can be corrected without affecting the water rights of other parties, or which is incomplete or indefinite in its terms and conditions may apply to the Water Board for the amendment and re-issue thereof, and the Water Board may amend and re-issue such licence or authorisation accordingly.

Corrections of errors in licence or authorisation.

55. An operator who has received an authorisation under this Ordinance to construct works, where the works authorised or a portion of them would, when constructed, be situated upon lands not held by the operator, may acquire an easement on, over, or through the land on which the works would be situated, and shall not exercise the authorisation unless or until the easement has been acquired.

Operator may acquire easement.

56. All encumbrances attaching to the land shall be borne by the person who before the grant of the easement was legally liable for or held the encumbrances.

Encumbrances.

57. An easement shall include the right of access to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining and repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement.

Easement includes right of access.

58. An easement shall include a right to take such materials existing naturally on the land as may be approved in writing by the Water Board from the land on, over or through which the easement has been granted, for the purpose of constructing, maintaining or repairing any work thereon.

Easement includes right to take materials.

59. When works have been executed by an operator on another landholder's land, the land occupied solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the holder of the property in respect of which the easement is held for his own purposes, and he may remove such excavated material, provided that no damage shall be done to the works of the operator or the works obstructed or interfered with by such removal.

Landholder may use land for farm purposes.

Operator must
avoid flooding
lands and
maintain canal
satisfactorily.

60. An operator who has acquired an easement which includes the construction of a canal shall be responsible for taking and maintaining adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying, and he must not cause damage to the land in respect of which the easement is held by permitting the accumulation of weeds, silt, or other obstruction or nuisance which might cause flooding, or any other damage of whatsoever description. The cost of any damage caused in this manner by the operator may be recovered from the operator by the landholder in any competent court.

Damage caused
by works of
operator.

61. In the event of damage by scour or otherwise being caused to the land in respect of which the easement is held by the works of an operator, the holder of the land in respect of which the easement is held may demand and the Water Board may by order require the operator to construct at his sole expense, or partly at the expense of such holder, such additional works as will in the opinion of the Water Board make the works to cease causing damage. If the operator fail to comply with an order of the Water Board given under this section, the Water Board may cancel his licence, which shall thereupon be null and void.

Operator shall
construct
works to
enable land-
holder to enjoy
his existing
works if
interfered
with.

62. An operator who has acquired an easement for the construction of works on another landholder's land which—

- (a) prevent the landholder passing freely over or on to his land as heretofore; or
- (b) interfere with his existing works, or structures, or devices, upon his land;

shall at his own expense, construct and maintain in repair, to the satisfaction of the Water Board, and under conditions which it may prescribe, which conditions shall be binding on the operator—

- (i) such bridges and other structures or devices as will make communication safe and convenient as may be decided by the Water Board; or
- (ii) such works, structures, or devices as are necessary to enable the holder effectually to enjoy the use of works, structures, or devices interfered with as may be decided by the Water Board.

63. An operator claiming an easement under this Ordinance shall serve a notice in writing on the holder of the land on, over or through which he desires to acquire the easement, and shall in the notice state or provide the following particulars, and whatever other further particulars may be required by Rules to be made under this Ordinance, that is to say, he shall provide :—

Operator desiring easement shall serve notice on landholder.

- (a) A description of the proposed works and a statement of their use.
- (b) A statement of the quantity or discharge of water, if any, to be diverted or dealt with.
- (c) A map showing clearly the nature and locality of the works or the area of swamp or lands to be reclaimed if the easement is for reclamation of a swamp or lands.
- (d) A statement of the area of the land, if any, occupied by the works, flooded as a result of the works, required for purposes of inspection and maintenance of the works, required for the excavation or collection of material for the works, required for the deposit of spoil or material derived from the works, or required for a road or roads to obtain access to the works.
- (e) A statement of the compensation which is offered, and the period of time during which he wishes to enjoy the easement.

64. If the landholder agrees to the claim for an easement either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed and after execution by the parties concerned, shall send two copies of the deed, which shall be certified by the Registrar of Titles, to the Water Board.

If the landholder agrees, particulars to be embodied in deed.

65. If the landholder does not within two months after the service of the notice agree to the claim for an easement or to any other matter necessary for the easement, the operator may apply to the Water Board for an easement in the manner prescribed by Rules to be made under this Ordinance and shall serve notice of the application upon the landholder.

If the landholder does not agree to the claim, application for easement may be made.

Claim for
easement may
be dismissed
or granted.

66. The Water Board may either dismiss the claim for an easement, or with the approval of the Governor in Council award the easement with or without modification and subject to such conditions as it deems just, but if the amount of compensation to be paid is the subject of disagreement between the operator and the landholder, and if the claim is awarded by the Water Board and the amount of compensation recommended by it is not agreed to by the parties, the decision on the question of the amount of compensation to be paid by the operator shall be referred to arbitration under the Arbitration Ordinance.

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Easement shall
lapse if works
not completed
within a
definite period.

67. An easement acquired under this Ordinance shall lapse if the works authorised be not completed and the water be not utilised within one year from the date of the award or within such further period as the Water Board may fix, or if at any time the water right is not substantially made use of in accordance with the terms of the licence for a continuous period of two years.

Operator shall
keep his works
in a state
of repair.

68. (1) If any work, constructed on the land of a person other than the operator, be out of repair or require cleansing, the operator or his agent shall if required in writing by the landholder to repair or cleanse the work, carry out the requirements within a reasonable time, and if he fail to do so, the landholder may cause all things necessary for carrying out the said repairs or cleansing to be done, and may recover the cost from the operator in any competent court.

(2) Such repairs or cleansing shall not be unreasonably demanded, and in the event of a dispute between the parties the Water Board shall decide what shall be considered reasonable repairs or cleansing.

(3) An operator who allows or suffers any such works to be out of repair or to be in such state as to require cleansing, shall be liable for all damage which may arise therefrom.

Landholder
may demand
and obtain use
of the works of
an operator.

69. (1) The landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Board either before or after the construction of the works, apply for a water right to make use of the works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, abstract, store or use under this Ordinance :

Provided that before a licence or authorisation is issued by the Water Board such proportionate cost of the works shall be paid by the landholder to the operator who constructed or is constructing the works as may be agreed on between the parties, or failing agreement as may be decided by the Water Board, and such agreement or decision shall be final and binding on all parties.

(2) The operator who constructed the works may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of until he has in writing surrendered such right of user. In the event of disagreement the decision of the Water Board shall be final.

(3) The landholder shall prove to the satisfaction of the Water Board that the works of the operator can be satisfactorily used for the purposes of the landholder and without material detriment to the operator.

(4) If the works require modification to enable the landholder to enjoy their use the landholder, unless the matter is otherwise agreed, shall pay to the operator :—

(a) The entire cost of modifying them in the manner approved by the Water Board.

(b) The cost of constructing and maintaining such devices for apportioning the quantities of water as the Water Board may prescribe or approve.

(5) The Water Board may at a later date modify the scale of payment, upon application by either party, when it is proved to its satisfaction that altered conditions have rendered a revision of the rates of payment just and equitable. Such alteration of rates of payment shall have effect from a date to be specified in a notice to be posted to both parties by the Water Board but shall not have retrospective effect.

70. An easement acquired under this Ordinance shall be registered against the title affected. If the property is registered under the Registration of Titles Ordinance the operator shall lodge with the Registrar of Titles two executed copies of the easement for registration purposes. If the property is registered under the Crown Lands Ordinance or the Land Titles Ordinance the operator shall submit the original,

Easements to be registered.

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together with one unexecuted copy for registration. A plan, which shall be signed by the Surveyor General, shall be attached to each document granting the easement.

**Determination
of easement.**

71. (1) An easement acquired under this Ordinance shall determine if and when, at any time, the licence or authorisation, for the exercise of which the easement has been acquired, is cancelled as provided for in this Ordinance, and on the date of such cancellation.

(2) In the event of the cancellation of any licence or authorisation, any works constructed by the operator on the lands of another person shall, where the operator is the sole user, if not removed by the operator within one year from the date of the cancellation, become the property of such other person, unless otherwise decided by the Water Board.

(3) In the event of cancellation or alteration of an easement the Water Board shall notify the landholder over whose land the easement has been granted and the Registrar of Titles. The landholder concerned may take such action as shall cause his title to be freed from the easement, and the onus of taking such action shall rest with the landholder.

**Governor in
Council may
order drainage
of swamp.**

72. (1) In the event of there existing wholly or partly upon any alienated land any swamp or any natural or unauthorised obstruction to the natural flow of water which has the effect of leading to a diminution of the flow by evaporation or absorption or otherwise, the Governor in Council, upon application by the Water Board, may order that such swamp or other feature be drained or that such obstruction be removed.

(2) The Governor in Council may order such work and method of execution of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection of the cost of the necessary works and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which might accrue to other parties from the execution of such works and the increased provision of water expected therefrom. Such order may state that such work shall be State-aided to such an extent as may be authorised by Legislative Council :

Provided that no landholder whose land is riparian to a body of water shall be deprived under this section of reasonable access to water except by agreement or on payment of compensation.

73. When swamps encroach upon the holdings of various holders and some of them desire to effect their reclamation in common, the Governor in Council may compel a dissenting minority to pay all expenses collectively with the operating majority, understanding as the majority those who represent their major part of the area of land considered to be reclaimable by the Water Board.

A minority of holders of land in or abutting on a swamp may be required to contribute to cost of drainage.

74. Whensoever parties cannot agree as to the compensation to be paid by one to the other, under the provisions of this Part, the amount of compensation shall be determined by arbitration under the Arbitration Ordinance.

Compensation to be decided by arbitration.

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PART III.

GENERAL PROVISIONS.

75. The powers conferred, and the duties and obligations imposed, by this Ordinance shall in any area of Crown land declared to be a native reserve or a communal reserve be exercised subject to the provisions of any law for the time being in force relating to land in native reserves or communal reserves.

Application of Ordinance to native reserves.

76. Upon the expiration of the time allowed in an authorisation or any extension of such time for the completion of works under this Ordinance the rights therein granted to the operator shall cease and determine and any works at the date of such determination constructed, erected, fixed or acquired may be taken over and operated or disposed of according to the order of the Governor in Council if not completed within the time allowed.

Forfeiture of rights if works are not completed within the time allowed.

77. (1) Subject to the payment of compensation therefor, the Governor in Council may, if at any time he shall deem it advisable in the public interest to do so, take over and operate or otherwise dispose of the works of any operator authorised under this Ordinance, and in such event every licence granted in connexion with such works shall forthwith determine.

Expropriation of works.

(2) In the event of disagreement regarding the compensation to be paid for expropriated works it shall be determined by arbitration under the Arbitration Ordinance.

Cap. 18.

Cancellation of water right for waste or non-user.

78. When the Water Board is satisfied after due enquiry that any licensee has abandoned the use of any water, or has wasted any water to which his licence entitled him, the Water Board, if it deems just and proper, may thereupon by order declare a cancellation of the licence, and the water right shall thereupon cease and determine :

Provided that if waste and not entire cessation of use is found to prevail or to have prevailed, the Water Board may issue a new licence entitling the licensee to such reduced quantity of water as appears to it justifiable.

Abandoned works.

79. (1) It shall be lawful for the Governor in Council on behalf of the Crown to enter upon, use, order the use of, maintain, vary, destroy or remove abandoned works, wherever situated without payment of any compensation whatsoever.

(2) Works may be regarded as abandoned when it is proved to the satisfaction of the Water Board that they have remained substantially unused for any of the purposes of this Ordinance by any licensee lawfully entitled to make use of them under this Ordinance for a period of one year.

(3) No action by the Water Board shall be taken, as in this section provided, except after the publication of a notice in the Gazette to the effect that the said works have been proved to the satisfaction of the Water Board to be abandoned and that failing lawful employment thereof within the period of one month from the date of the issue of the Gazette in which the notice appears the right to use, vary, or dispose of the works in question will be assumed by the Crown.

Offences and penalties.

80. (1) Any person who does or commits any of the following acts shall be guilty of an offence under this Ordinance :—

- (a) Wilfully or maliciously obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Department, a qualified engineer, a Government surveyor or a land surveyor, or other person duly authorised by the Water Board in the exercise of his duties under this Ordinance.

- (b) Without authority under this Ordinance knowingly or wilfully defaces, alters or removes or causes to be defaced, altered or removed, any survey mark, water gauge, weir, or measuring device, or other work, structure, or appliance for the purpose of water control or investigation.
- (c) Without authority under this Ordinance throws or conveys or causes or permits to be thrown or conveyed, any rubbish, dirt, trade refuse or other offensive or unwholesome matter or thing into or near to any body of water or water contained in any work, in such a manner as to cause pollution thereof.
- (d) Wilfully or maliciously hinders, interrupts, or causes or procures to be interrupted or hindered, any operator under this Ordinance, or his manager, contractors, servants, workmen or any of them in the lawful exercise of any of the powers and authorities of this Ordinance conferred.
- (e) Wilfully or maliciously lets off or discharges water from the works of any operator so that the said operator loses the use of the said water.
- (f) Lays or causes to be laid, erected or constructed any work to communicate with the work of any operator, with the intention of drawing water from the said work without authority under this Ordinance.
- (g) Unlawfully interferes with the works or water supply of any operator.

Such person, for any such act as aforesaid, shall be liable on summary conviction to a penalty not exceeding two thousand shillings and in default of payment to imprisonment for a period not exceeding three months.

(2) Any person who, without authority under this Ordinance, obstructs, interferes with, diverts or abstracts water from any watercourse or any body of water, or who negligently allows such obstruction, interference, diversion or abstraction shall be guilty of an offence under this Ordinance, and shall be liable on summary conviction to a penalty not exceeding one hundred shillings a day or part of a day for every day during which such offence is continued, or in default of payment to imprisonment for a period not exceeding three

months, and in addition to any other penalty to the destruction of any works executed and the confiscation of any plant or machinery used, and the cost of the destruction of such works may be recoverable by the Director from such person in any competent court.

(3) Any person who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under his Ordinance—

- (a) constructs, erects, or maintains works without authority or in a manner contrary to authority conveyed under this Ordinance;
- (b) diverts or abstracts water in excess of the quantity which he is authorised to divert or abstract;
- (c) fails to erect, construct, or maintain a measuring device, if so required under this Ordinance;
- (d) fails to obey an order of the Water Board or other authority, lawfully given under this Ordinance;

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding sixty shillings a day or part of a day for every day during which such offence is continued or in default of payment to imprisonment for a period not exceeding three months.

Liabilities of offender.

81. (1) The conviction of any person under the last preceding section shall not relieve him from any liability to answer in damages to any other sufferer by the wrongful acts aforesaid or any of them.

(2) Every operator who wilfully violates any of the provisions of this Ordinance, or any of the Rules made thereunder, or of the terms or conditions of his licence or authorisation shall, in addition to all other penalties, be liable to have his licence or authorisation cancelled.

Penalty for offence against this Ordinance.

82. Every person who shall be guilty of an offence against this Ordinance or against any Rule made under this Ordinance shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by any Rules made thereunder, but if no penalty is expressly imposed he shall be liable to a penalty of not more than one thousand shillings or in default of payment to imprisonment for a period not exceeding three months.

83. (1) Except where it is otherwise provided, all penalties imposed by this Ordinance, or by any Rules in force under it, may be recovered by any person thereto authorised by the Governor. Penalties may be recovered by authorised person.

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is, and on whose behalf he is acting, or from both, or if the person actually committing the offence is a resident native labourer, or a member of his family, under the Resident Native Labourers Ordinance, 1925, from the person on whose farm such resident native labourer or the member of his family may have been actually residing at the time of the offence. No. 5 of 1925.

84. (1) Every penalty imposed upon any person by this Ordinance or by any Rule made under the powers conferred by this Ordinance shall be without prejudice to the right of the Water Board to recover from such person— Recovery of penalty does not prejudice right to take other proceedings.

(a) any sum for any damage sustained by it through his act or default;

(b) the cost and expenses incurred by it in remedying any such damage.

(2) The payment of any such penalty shall not bar or affect the right of the Water Board or any person authorised by it to bring any action or to take any proceeding against such person.

85. No action at law shall lie against or be maintainable against the Crown, the Government, the Water Board, or any officer of Government for any act done on account of an authorisation, licence or sanction, or for any damage caused thereby. Government not liable at law.

86. The Water Board is hereby empowered for all the purposes of this Ordinance to declare whether particular channels or depressions are watercourses and whether particular bodies of water are streams, swamps, natural lakes or springs, and to declare, define or delineate the boundaries thereof, and all matters pertaining thereto, and to alter such declaration. Power of Water Board to declare matters pertaining to bodies of water.

Qualified
engineer.

87. (1) Where in the provisions of this Ordinance, or of any Rules made thereunder, it is required that any acts shall be done or requirements be provided by a qualified engineer the provisions as to such engineer shall be those embodied in Rules made under this Ordinance.

(2) The onus of proof that projects, plans, documents, and applications required under this Ordinance to be supplied, prepared, or provided by a qualified engineer have been so supplied, prepared or provided shall be with the party presenting or using them.

Sanctions.

88. (1) Notwithstanding anything contained in this Ordinance, it shall be lawful for the Water Board to authorise by sanction for any fixed period of time the diversion, abstraction, obstruction, or use of water and the works required therefor according to such terms and conditions as the Water Board may embody in the sanction or as may be prescribed by Rules made under this Ordinance.

(2) In the event of any works not being in conformity with a sanction, or in the event of a sanction having been terminated, the Water Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court.

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable.

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit.

(5) A sanction or a copy thereof certified by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in the sanction.

Joint State
and other
works.

89. The Governor in Council may direct that State works may be executed in augmentation, modification, or improvement and subject to provisions herein contained, in supersession of, any other works, for or comprising the employment of waters, and he may at any time order that any works contemplated or under execution or completed, shall be State-aided to such an extent as may be authorised by the Legislative Council.

90. (1) Every operator, and his managers, servants and workmen shall afford to any inspecting officer such information as is within their knowledge and power in all matters relating to any inquiry held by him under the provisions of this Ordinance, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works or any portion thereof.

Information to be afforded to inspecting engineer.

(2) The production of instructions in writing signed by the Chairman of the Water Board or his deputy shall be sufficient evidence of the authority of such inspecting officer.

Proof of his authority.

91. (1) The Water Board, or any person deputed by it, may in the exercise of the right of the Crown to the control of bodies of water enter upon any land and inspect such bodies of water and take such measures as are thought fit for the conservation and regulation of such water and for its preservation from pollution and for the protection of the bed over which it flows, and for removing any obstruction from and for clearing and deepening such bed, or may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed; and it shall not be necessary for the Water Board or any person deputed by it to obtain an injunction or other order of a court to entitle it or him to make such entry or to take such measures.

Right of entry of the Crown.

(2) Compensation shall be paid to the holder of any such land for any actual injury by the measures, other than measures for the avoidance of waste or removal of unauthorised works or stopping unauthorised diversion, abstraction or obstruction of water, taken under the powers conferred by this section, and failing agreement the amount of such compensation shall be determined by arbitration under the Arbitration Ordinance.

Cap. 18.

92. The Water Board shall be entitled to institute and maintain any proceeding in any court against any person accused of any offence against this Ordinance, and may in its own name take any civil proceeding against any person.

Water Board may institute proceedings.

93. The Water Board may require any statement called for under this Ordinance, or under any Rules thereunder, to be verified by oath, affidavit, affirmation or declaration.

Statement under oath.

Notices,
how given.

94. (1) A notice required to be served in pursuance of this Ordinance, or of Rules under it, shall be served—

- (a) by delivery of the same personally to the person required to be served, or, if such person is absent or cannot be found, to his agent; or
- (b) by leaving the same at the usual or last known place of abode of such person; or
- (c) by post addressed to the usual or last known place of abode of such person; or
- (d) in the case of a notice required to be served on a local authority, or corporate body or company, by delivering the same to their clerk, or secretary, or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office :

(2) Provided that if the landholder is not known and after diligent inquiry cannot be found, the notice may be served by leaving it, addressed to the landholder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property :

(3) Provided also that a notice required to be given to a landholder may be addressed by the description of the " landholder " of the land or premises described (in the address) in respect of which the notice is given, without further name or description.

(4) Provided further that where under the provisions of this Ordinance notices or other documents require to be served on or by a native in a native reserve or communal reserve the notices or other documents shall have the same force and effect if served on or by the Chief Native Commissioner or such officer as he may appoint.

Proof of
orders.

95. All documents purporting to be orders made by the Governor in Council, or by the Governor, or by the Water Board, or by the Director, or by the officer deputed by the Water Board or Director, as the case may be, shall be received in evidence and shall be deemed to be those orders without further proof of handwriting or otherwise unless the contrary is shown.

1929

Water

No. XXXV.

96. (1) There shall be established a Water Appeal Board which shall consist of— Water Appeal Board.

- (a) a judge of the Supreme Court (who shall be Chairman) to be appointed by the Governor on the advice of the Chief Justice, and
- (b) two other persons, who shall be appointed by the Governor from time to time.

(2) In every case in which a licence has been cancelled by the Water Board under the powers conferred by this Ordinance, the person whose licence has been cancelled may appeal to the Water Appeal Board within thirty days of the date of the cancellation of his licence.

(3) On the hearing of the appeal, the Water Appeal Board may confirm the order of the Water Board cancelling the licence, or may revoke such order.

(4) For the purpose of every appeal under this section, the Water Appeal Board shall have all the powers vested in commissioners under sections 10, 11 and 12 of the Commissions of Inquiry Ordinance.

Cap. 25.

(5) The Water Appeal Board may make such Rules in connection with the hearing of appeals under this section as to it may seem fit.

(6) All appeals heard by the Water Appeal Board shall be decided by a majority of votes of the Chairman and the members of the said Board.

(7) Every decision of the Water Appeal Board shall be final and binding on all parties concerned.

97. The Governor in Council may, on the advice of the Water Board, from time to time, make Rules providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Ordinance, or that may be necessary or expedient for carrying out the objects or purposes of this Ordinance, and where there may be in this Ordinance no provision or no sufficient provision in respect of any matter or thing necessary or Rules.

expedient for giving full effect to this Ordinance, providing for or supplying such omission or insufficiency, and without prejudice to the foregoing powers, providing for all or any of the matters following :—

- (1) Privileges or rights of riparian holders.
- (2) Examinations, fees, registration and other matters pertaining to qualified engineers.
- (3) Units of water.
- (4) Charges for diversion, abstraction, storage and use of water and fees for services in connexion with water rights and sanctions.
- (5) Drainage of lands.
- (6) Associations of operators.
- (7) Community, public and urban projects.
- (8) Controlling and measuring devices.
- (9) Action during drought.
- (10) Sanctions.
- (11) Water rights in Native Reserves.
- (12) Temporary works and diversions of water.
- (13) Documents and plans to be submitted by applicants under this Ordinance.
- (14) Forms to be used under this Ordinance.
- (15) Inspection of works.
- (16) Relations between operators and municipal and other local authorities.
- (17) Easements.
- (18) Drainage and reclamation of swamps.
- (19) Water power rights.
- (20) Abandoned works.
- (21) Appointment, powers and duties of water bailiffs.
- (22) Investigation of water resources and establishment of water gauges and marks.
- (23) Constitution, powers, obligations, duties and membership of District Water Boards and all matters pertaining thereto.
- (24) Generally for the better carrying out of the objects of this Ordinance.

Such Rules may provide for the imposition of a penalty for the infraction thereof not exceeding one thousand shillings and in default of payment thereof a term of imprisonment of either description not exceeding three months.

98. The production of a copy of the Gazette containing any order, rule, or notice purporting to have been made under this Ordinance shall be evidence, until the contrary is proved, of the due making of such rule or notice, and that all preliminary steps have been duly taken necessary to give full force and effect to the same. **Production of Gazette to be evidence of validity of regulations.**

99. Section 145 of the Crown Lands Ordinance and all Rules made thereunder are hereby repealed without prejudice to anything lawfully done thereunder previous to the coming into operation of this Ordinance. **Repeal. ('ap. 140.**

No. XXXVI.*Legislative Council (Emergency)***1929**

No. 36 OF 1929.

Date of assent.

[31ST DECEMBER, 1929.]

An Ordinance to Extend the existing Legislative Council of the Colony to a date not later than the 20th day of February, 1931.

Date of commencement.

22nd January, 1930.

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

Short title.

1. This Ordinance may be cited as “ the Legislative Council (Emergency) Ordinance, 1929,” and shall be read as one with the Legislative Council Ordinance (Chapter 24 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Extension of existing Council.

2. Notwithstanding anything contained in the Principal Ordinance the Legislative Council now existing shall be dissolved on the 20th day of February, 1931, unless it shall have been previously dissolved by the Governor by Proclamation and the provisions of the Principal Ordinance shall apply as if the 20th day of February, 1931, were the end of a period of three years from the date of the first election.

1929

Alteration of Time (Repeal)

No. XXXVII.

No. 37 OF 1929.

[31ST DECEMBER, 1929.] Date of assent.

An Ordinance to Repeal the Alteration of Time Ordinance, 1928.*4th January, 1930.*Date of
commencement.

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

1. This Ordinance may be cited as “ the Alteration of Time (Repeal) Ordinance, 1929,” and shall come into operation at midnight on the 4th day of January, 1930.

Short title.

2. At and after midnight on the 4th day of January, 1930, time within the Colony and Protectorate shall be deemed to be and shall be two and one half hours fast on Greenwich mean time.

Alteration of
local time.

3. The Alteration of Time Ordinance, 1928, is hereby repealed.

Repeal of
Ordinance
No. 11 of
1928.

Date of assent.

[31ST DECEMBER, 1929.]

An Ordinance to Amend the Natives' Arms Ordinance.

Date of commencement.

31st December, 1929.

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 Natives' Arms (Amendment) Ordinance, 1929,” and shall be read as one with the Natives' Arms Ordinance (Chapter 137 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Amendment of section 3 of the Principal Ordinance.

2. Section 3 of the Principal Ordinance is hereby amended by adding at the end of the section the following :—

“ Provided that no employer, owner, or occupier shall give or issue to any native any such permission or permit as is mentioned in paragraphs (b), (c) or (d) of this section without the written authority of a district commissioner to give or issue permissions or permits.

The district commissioner may authorise any employer, owner, or occupier to give or issue such permissions or permits either generally or to such numbers of natives only as the district commissioner may decide, and subject to such conditions as the district commissioner may think fit.

Provided further that every employer, owner or occupier who is authorised to give or issue such permissions or permits as aforesaid shall within seven days of giving or issuing any such permission or permit report to the district commissioner the giving or issuing of such permission or permit together with the particulars prescribed by section 4 of this Ordinance.”

1929

Natives' Arms

No. XXXVIII.

3. Any permission or permit given or issued under the provisions of the Principal Ordinance may at any time be revoked by the employer, owner, or occupier giving or issuing the same or by a district commissioner :

Power to
revoke.

Provided that any employer, owner or occupier who revokes any permission or permit given or issued by himself shall within seven days report to the district commissioner the revocation of such permission or permit and the reasons therefor.
