

1951

Kansas

No. 17228

SUBJECT

CO 533/413

Road & Railway Competition

Lawrence of Road & Railway Competition Act, 1934  
Law of 1951

Previous

1968/50  
1974/29

Subsequent P.O.

1975/31 (K. Stat. Rel.)  
1976/25 (Lawrence of)

1. Indian Association Ltd. 15 June  
State has contemplated legislation to stiffen  
transport by imposition of prohibitive license fee  
in view of unfair competition to railway  
against proposed inland and require intervention

2. H. P. Polak 16 June  
Enclose copy h.o. and request complaint made  
there be investigated before proposed legislation  
is proceeded with.

Parliamentary Question by Mr. Hamilton for  
Oral reply on Wednesday 22 June 1931  
file P. O. file

Re C. 1000

Japan - Govt  
must be given  
reference of  
file

One gross pack of S. 2000  
worth 100, which the Govt of  
Japan requires for shells and  
its present (1) direct to the  
Secy of State, (2) to Mr Polak  
(see No. 2) and (3) to Mr Hamilton  
(who was asked if this question  
for the 22 June in P. O. file (Hamilton))  
No doubt it will take place in  
the P. O. also.

We would like for business purposes  
the 3 G.M.s. and also, in case  
the P. O. is under ~~the~~ car  
spare parts of (see No. 1)



DESTROYED UNDER STATUTE

To Hon. Polak (Lang)

26 JUN 1951

210 218  
6 JUN 1951

DESTROYED UNDER STATUTE

DESTROYED UNDER STATUTE

Hon. Polak

21 June

105 to 20 file knowledge no 3

in reply to me

Hon. Polak

21 June

12 copies of report of Select Committee

on Public Service Bill

sent to me

Quintan

105

Hon. Polak

25 July

105 to 20 file knowledge no 3

in reply to me

12 copies of report of Select Committee

on Public Service Bill

sent to me

105 to 20 file knowledge no 3

in reply to me

12 copies of report of Select Committee

on Public Service Bill

sent to me

105 to 20 file knowledge no 3

in reply to me

kindly find I am not sure but  
we might not want to do it  
to we get copies of the bill  
as per the aspect of  
following report session will  
be a struggle - I see Robert  
will be reacting vs to have  
a communication with the  
Gov by air mail

Alternately, I see  
reason why to have a  
copy of the bill sent to  
the Secretary of the  
Government

Quintan  
6830

Hon. Polak

25 July

105 to 20 file knowledge no 3

in reply to me

12 copies of report of Select Committee

on Public Service Bill

sent to me

105 to 20 file knowledge no 3

in reply to me

12 copies of report of Select Committee

on Public Service Bill

sent to me

105 to 20 file knowledge no 3

in reply to me

The reasons for the Bill are set out  
fully in the Committee's report (flagged in No. 7  
and I put up as No. 9's note as to the ordinary  
precedence

licence fees for motor lorries. The rates to be imposed are not of general application but apply only between certain scheduled points as shown. It will also be seen that the rates proposed in the Report of the Select Committee are only 2/3rds of those proposed in the original Bill.

*(M. J. M. J.)*

There is no doubt that the railway is being faced with a very difficult position owing to the changed conditions since the present rating policy was adopted. At that time inward traffic exceeded outward resulting in empty haulage to the Coast, and maize forming a small proportion of the traffic could be carried at a low rate. Now the tendencies are all the other way and maize forms a substantial portion of the traffic. The position is of course accentuated by motor competition which leaves the unremunerative traffic to the railway and tries to skim the cream. The U.M. has

*I hope to send on shortly a copy given to me by Mr. Gore*

put up a memo raising the whole question of rating policy and it is to be considered by the Railway Advisory Council presumably at an early meeting.

As regards Mr. Polak's representations the Bill is stated to be an experimental one. There is of course no question of racial discrimination.

This was originally delayed to try to get duplicates of the various reports etc. for communication to Sir R. Hamilton and later by the changes in office.

*S. H. Allen  
17/9/51*

There is to be a meeting of the Railway Council on September 23rd and we shall probably therefore have the Governor's views on the rating question at the same time as we hear from him what has happened to this Bill in the Legislative Council.

There is no doubt that if anything can be done to adjust rates as between up and down traffic without cooling production it will be an excellent thing. But the question of railway vs. road competition cannot be shelved by saying that rating is the real trouble. Every country, whether the railways are State owned or not, is already faced with the problem of keeping alive the means of transport which is necessary for freight which cannot be moved by road.

Just as we cannot put the railways in this country on their feet by telling them to increase their coal rates, so we cannot put the Kenya-Uganda railways on their feet by increasing the maize or cotton rate.

*T. G. Galt*

*14/9/51*

*14/9/51*

*Yes, I think this matter should be given as much weight as we have the former comes in the general rating question*

*C. J. May  
sent to Secy*

*17/9*

*15/9/51*

1000  
No. 288  
a copy  
of the original copy of carriage of goods  
by motor (Control) Ordinance No. 23 of 1951 with  
the notes of non-disallowance by the  
Minister of Transport

we no point in  
the G.O. since nothing can possibly  
be done till we get the O.A.  
28/1/52

28/1/52  
The Minister's copy of the original copy of  
the G.O. is being sent to the  
Minister of Transport

28/1/52  
The Minister's copy of the original copy of  
the G.O. is being sent to the  
Minister of Transport

BY AIR MAIL

1000  
The 2 authenticated copies of carriage of goods  
by motor (Control) Ordinance No. 23 of 1951 with  
the notes of non-disallowance by the  
Minister of Transport

BY AIR MAIL

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The 2 authenticated copies of carriage of goods  
by motor (Control) Ordinance No. 23 of 1951 with  
the notes of non-disallowance by the  
Minister of Transport

RECEIVED UNDER STATUTE

1000  
The 2 authenticated copies of carriage of goods  
by motor (Control) Ordinance No. 23 of 1951 with  
the notes of non-disallowance by the  
Minister of Transport

The Ordinance imposing heavy licence fees on  
commercial motor vehicles plying between Lompasa and  
Barum for certain intermediate points is now sent  
home, and the Governor wants to know as soon as  
possible what non-disallowance will be signified.

On the previous <sup>day</sup> Mr. Robert Hamilton  
has minutes that the matter should come up again  
as soon as we have the Governor's views on the general  
rating question. I have spoken to Mr. Allen, and  
we assume that this minute was written on the  
assumption that we should have those views before  
further action was required on this file. The  
rating question was to be considered at a meeting  
of the Railway Advisory Council held on 25/1/52,  
and we may not have the Governor's views for a month  
or more. In the circumstances, it is assumed that it  
will not be desired to hold up consideration of  
this Ordinance.

The position seems to be as follows:  
something has to be done by the railway to meet  
the competition of motor traffic. Either this  
could be done by lowering the present rates on  
Class I and II inland traffic (the inevitable  
corollary of which would be a raising of the rates  
on lower class traffic both inland and outward) or  
it could be done by an Ordinance such as this. Both  
courses would be equally disastrous to the motor  
owners. I do not see that they would have had any  
cause to complain had the freight rates been lowered  
and it is arguable that they have equally little  
cause to complain at the other alternative being  
adopted.

I am not, however, quite certain about  
this. The high rates on imports are essentially a

*Supra, official*  
supplies or exports which, on purely commercial grounds, might be difficult to justify in the circumstances. I am inclined to think that rates for motor vehicles would have been in this position had the Board the right to raise them.

On the other hand, no objection in principle to Government imposing a license on motor vehicles competing with a state-owned railway, since the community as a whole have an interest in maintaining the prosperity of the railway.

The loss to the railway from this traffic is <sup>roughly</sup> estimated at from 250,000 to 1,000,000 a year, and the Administration cannot in present circumstances afford to <sup>at this</sup> meet such a loss. While general <sup>principles</sup> instances of rating policy are <sup>in general</sup> ~~in general~~ <sup>direct</sup> ~~direct~~.

I would therefore suggest that non-disallowance of the Ordinance be signified at once by telegraph as desired, but that it should be made clear at the same time that the Secretary of State would wish the measure to be regarded at present as a temporary and experimental one, and that he would wish to reconsider the whole question when he has received the Governor's views (in his capacity as High Commissioner) on the general rating policy of the railway, which he understands is now under consideration.

On other points in the Ordinance there is no provision for appeal from the decision of the Board. I do not know, however, that such provision is really necessary. Under the Imperial

Imperial Road Traffic Act 1930 there is no appeal from the decision of the licensing authority, which is the County Council.

The Ordinance does not specify the composition of the Board. This point is dealt with at the top of page 3 of the Select Committee's Report.

*Planned*  
25-1-31  
*LB*

*B* - Please see with (13) by Mr. Trotter  
my personal comments

*W. B. ...*  
25-1-31

Also then should have come to  
the 3. 5. 8 (2) after ...  
reason is obvious of ...  
Traffic Act 1930

*W. B. ...*

*It's 10/10 ...*

*W. B. ...*  
10/10  
10/10  
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10/10

for till 30th ...  
regards my early reply to ...  
regards the legal comment ...  
3.4 (2) now clearly be read with 4. (1). The practical effect is to prohibit ...  
of goods by the seller in his own vehicles from one scheduled place to another or beyond, i.e. for a definite destination which is in no case less than 100 miles (measured by rail). In the cases then

Agree 1/1/31

provision seems both purposeful & indeed necessary of the object of the Order is to be achieved. The necessary legal steps relate to drafting amendments, the need for which is commensurate by despatch.

① vs 1732/31 below

See also para 2 of 1732/31 which states that the amendments are experimental & temporary.

Para. 52 of the Railway Rates (Temporary) Bill shows that the Railway Administration recognize that the relief afforded by the Ordinance should be regarded as temporary only.

Signify a.d.n. by the amendments by simply embodying the suggested drafting amendments.

29/9/31

There seems no other way to signify our disallowance but in doing this we have to ask for assurance that this measure is purely experimental & add that the Govt. consider that the policy will require further consideration in connection with their whole system of railway rates.

W. Allen 29/9/31

See 1733/31 below

I agree generally with the preceding minutes, and with the action it is proposed to take. The experimental character of this legislation is obvious, flowing from the circumstances in which it is passed, and is strongly insisted upon throughout:—e.g. the Attorney General's speech. There are various points to which criticism could be directed; but—for once—Lord Delemere seems to have put the thing correctly when he signed because "it is the best (measure) on which agreement can be reached", and recognised that modifications would have to be made in the light of acquired experience.

2. A minor point. I find no reference to the elaborate South African report on railway and road competition. That report is the most exhaustive which I have seen on the subject; and it might be well to call Kenya's attention to it, semi-officially, in case it has hitherto escaped their attention. There may be things in it of value to them:—one cannot put it higher than that. (It did make some very revolutionary suggestions, I remember, and we should avoid any suggestion that we mean them to take it as a guide. It should be regarded merely as a source of information.)

The 30-9-31.

30/9/31

See 5 below  
In the minutes of 14-9-31 we contemplated a more lenient form of consideration of the matter than the 14-9-31. I think the 14-9-31 was a mistake.

14/10/51  
To the Hon. Sec. of State  
London

Dear Sir,  
I have the honor to acknowledge  
the receipt of your letter of the 10th  
inst. in relation to the proposed  
amendment to the Bill for  
the purpose of providing for  
the better regulation of the  
practice of medicine in the  
United Kingdom.

I am glad to see that  
you are in agreement with  
the proposed amendments  
and I am sure that the  
Government will be glad to  
accept them.

I am, Sir, very  
truly,  
Yours,  
Herbert Morrison

I am glad to see that  
you are in agreement with  
the proposed amendments  
and I am sure that the  
Government will be glad to  
accept them.

With  
11/10/51

15 To the Hon. Sec. of State  
London 10/10/51

I have the honor to acknowledge  
the receipt of your letter of the 10th  
inst. in relation to the proposed  
amendment to the Bill for  
the purpose of providing for  
the better regulation of the  
practice of medicine in the  
United Kingdom.

I am glad to see that  
you are in agreement with  
the proposed amendments  
and I am sure that the  
Government will be glad to  
accept them.

I am, Sir, very  
truly,  
Yours,  
Herbert Morrison

With  
11/10/51

Project 1316 10

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Estimated by  
Date 9/10

for Mr. A. M. ...

OB  
1-10-1931

Out of  
12-001-1931

~~Handwritten scribble~~

Mr.  
Room  
File  
Serial

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conferences about the

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(entire) ... it has

been reported that the ...  
... of

the recent South African  
Road Motor Competition

Conclusion of ...  
...  
(though ...)

H. T. ...

Report of ...

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 proposed when ~~know~~ ~~of~~ ~~it~~ ~~is~~  
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 for ~~and~~

Approved by J. H. ...

X-7228 1/2 x 15  
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G. O.  
 W. Raymond M.  
 Director

Bureau of  
 ...

Mr. ...  
 Mr. ...  
 Mr. ...  
 Mr. ...  
 Mr. ...

**DRAFT**  
 Proposed  
 ...

No. 302 from ... Dept  
 ...  
 be advised to receive his  
 from a ...  
 report of ...  
 Motor (Catal) ...  
 I am ...  
 ...  
 and I consider that policy  
 will require further ...  
 in connection with the ...  
 ... of ...

Received  
 ...  
 ...

See

X 17228 / 14 K

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boxed  
3.30 p.m.  
4/10/48

No 302 your letter of 14<sup>th</sup> Sept  
is read His Majesty will not  
be advised to exercise his  
power of disallowance in  
respect of Carriage of Goods  
{ Motor (Lahol) Ordinance  
{ and a proviso given that  
the same is purely experimental  
and I consider that policy  
will require further consideration  
in connection with the whole  
question of railway rates

Secy

Mr. Ronald Wray

Sec 4 (2) would seem to prevent a man delivering goods which he has sold in his own vehicles & he

must know what the effect of this may

be as the vehicle will have a price it seems rather low for reaching premises

I do not follow the reference to section 8(1) to an application for a licence under section 4

Section 4(3) is not very clear &

does not embrace the cases for a

licence beyond the scope of (1)

There appears to be an appeal

from the decision of the Board, as stated in the Eastwood's case etc.

H. W. Fieldwick

to be taken into account

2 pages

and the same is done when the order is made

to be taken into account

BY AIR MAIL



GOVERNMENT HOUSE  
NAIROBI

KENYA

NO 5140

RECEIVED  
27 SEP 1961  
COL OFFICE

KENYA

September, 1931

Sir,

With reference to my despatch No. 471 of the 15th August, I have the honour to transmit two authenticated copies of Ordinance No. XXIII of 1931 entitled an Ordinance to provide for the licensing and regulation of the carriage for reward of goods by motor vehicles over certain roads of the Colony, to which I assented in His Majesty's name on the 18th September, together with two copies of the legal report thereon prepared by the Attorney General. Printed copies of the Ordinance are being sent under separate cover.

2. I enclose also a record of the speech made by the Attorney General in moving the adoption of the report by the Select Committee, in which he dealt fully with the reasons for the changes in the Bill recommended by the Select Committee. A copy of the Select Committee's report accompanied my despatch under reference.

3. These documents render it unnecessary, I think, for me to deal further, in this despatch, with the various points which have from time to time been raised on this important subject, and I trust that I may receive telegraphic intimation that the Ordinance will not be disallowed.

The General Manager, Kenya and Uganda Railways and Harbours, is anxious for very early steps to be taken to set up the Board, and the selection of its personnel is now engaging my attention.

I have the honour to be,

Sir,

Your most obedient, humble servant,

H.S. Martin

BRIGADIER-GENERAL

G O V E R N O R

THE RT. HON. J. H. THOMAS, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
L O N D O N. S.W.1.

Minut. tel. 2/9/31

## LEGAL REPORT

### THE CARRIAGE OF GOODS BY MOTOR (CONTROL) BILL, 1931.

This measure is designed to regulate the present indiscriminate competition with the Railway by the carriage of goods by motor vehicles, principally from Mombasa to Nairobi.

This question has for long engaged the close attention of Government, and copies of the most recent report on the subject, and of the report of the Select Committee on the Bill are attached hereto.

The Bill provides for the establishment of a Board to hear and determine applications for licences to carry goods for hire between scheduled places, these places being Mombasa, Voi, Malindi, Nairobi and Nakuru.

The Board in considering such applications must have regard to certain matters which are set out in Clause 5 of the Bill. This clause is modelled on the provisions of section 72 of the Road Traffic Act, 1930, but in sub-clause (2) it contains a proviso that the Board may not refuse an application solely on the ground that existing railway facilities are adequate.

Vehicles licensed for the carriage of goods between scheduled places shall be insured against third party risks, the wording of the relevant clause being similar to that in section 36 of the English Act of 1930.

For a licence under the Bill a fee is payable of £50 for each stage of the route to be covered.

This

15

This fee is calculated at a figure which is not so high as to be prohibitive, but will still leave a margin of profit for well controlled and regulated services.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

7th September, 1931.

  
ATTORNEY GENERAL.

THE CARRIAGE OF GOODS BY MOTOR (CONTROL)  
BILL, 1931.

This measure is designed to regulate the present indiscriminate competition with the Railway by the carriage of goods by motor vehicles, principally from Bombay to Karachi.

This question has for long engaged the close attention of Government, and copies of the most recent report on the subject, and of the report of the Select Committee on the Bill are attached hereto.

The Bill provides for the establishment of a Board to hear and determine applications for licences to carry goods for hire between specified places, these places being Bombay, Col. Dakshin, Karachi and Sukkur.

The Board in considering such applications must have regard to certain matters, which are set out in Clause 3 of the Bill. This clause is modelled on the provisions of section 72 of the Road Traffic Act, 1930, but in sub-clause (2) it contains a proviso that the Board may not refuse an application solely on the ground that existing railway facilities are adequate.

Vehicles licensed for the carriage of goods between scheduled places must be insured against third party risks, the wording of the relevant Clause being similar to that in section 35 of the English Act of 1930.

For a licence under the Bill a fee is payable of £30 for each stage of the route to be covered.

This,

The Bill is calculated at a charge which is not  
so high as to be prohibitive, and will still leave a margin  
for all controlled and regulated services.

In my opinion, His Excellency the Governor is  
properly advised to this Bill in the name and interests  
of His Majesty.

Hairdri,

7th September, 1931.

(Sd.) A. D. A. MacGregor.  
ATTORNEY GENERAL

## NEW APPOINTMENTS AND NEW BUILDINGS

THE RT. HON. LORD DELMEER: Your Excellency, may I give notice of the following question:

Will Government give an assurance

(1) That no posts will be filled and no new appointments made

(2) That no new buildings will be started until the 1938 Budget is passed?

## MOTIONS

REPORT OF SELECT COMMITTEE OF THE COUNCIL ON GOODS BY MOTOR (CONTROL) BILL

THE HON. THE ATTORNEY GENERAL (MR. D. A. MACGILLIVRAY, K.C.): Your Excellency, I beg to say

That the Report of the Select Committee on the Carriage of Goods by Motor (Control) Bill be adopted.

The Report on this question, Sir, has been in the hands of hon. Members for some days, I understand, and it is a matter which has attracted a considerable amount of public interest. In your facts, Sir, and in view of the further work that is to be done in the underlying legislation was accepted by the Council at the last Session, I do not propose to do more than discuss and endeavour to explain shortly the amendments to that legislation which are recommended in this Report.

The first eight paragraphs of the Report, Sir, are explanatory of the arguments which were adduced by the witnesses who appeared before the Committee, and as I see the position this morning, Sir, all for the further explanation of my part. I propose, therefore, Sir, to begin with the ninth paragraph of the Report where the suggested amendments commence. Of those amendments, Sir, there are I think, relatively few to which I need specifically draw attention. There is, however, one—or I might perhaps more correctly say there are two—which are of considerable importance. Hon. Members will recollect that in the Bill as published and as read a second time in the Council the system of scheduled points extended from Mombasa right throughout the Colony and Protectorate to Eldoret on the one side and to Kisumu on the other side, thus covering practically all the road system of the Colony which ran parallel to the main Railway lines. The recommendation of the Committee, Sir, is that for the time being at least and in view of the provision in the Bill which we recommend should still be retained that Your Excellency may add further scheduled points if and when an occasion for so doing arises we recommend, Sir, in the

Report that the scheduled points should extend only to Nakuru. But that between Mombasa and Nairobi—the most important portion of the road system of the Colony from the point of view of this legislation—there should be not one scheduled point, as originally recommended, at Voi, but two at Voi and at Makindu. The effect of that will be, Sir, that between Mombasa and Nairobi there will be three stages: Mombasa to Voi, Voi to Makindu, Makindu to Nairobi. Beyond Nairobi there will be one further stage of approximately the same road mileage from Nairobi to Nakuru.

As a necessary corollary to the acceptance of that recommendation, Sir, there follows a reduction of the licence fee over any one stage. The original Bill recommended a licence of £45 from Mombasa to Voi and a licence of a corresponding amount from Voi to Nairobi. This recommendation of the Committee, Sir, is that inasmuch as there will now be three stages instead of two the original total licence from Mombasa to Nairobi of £90 should be retained but that instead of two stages of £45 each there should now be three stages, each of which will cost £30. A further corollary to that, Sir, is that for a licence to convey goods for hire from Nairobi to Nakuru, instead of a fee of £45 there will now be charged a fee of £30. That, I think, Sir, is not so unjustifiable as it may appear at first sight to be because, Sir, when we are considering the location of Nakuru there operates in favour of the Railway a substantial reduction in the taper rate on a long haul from the Coast and also the distribution rates, especially low distribution rates from Nairobi. That, I think, is the most important of the recommendations which the Committee has made, Sir, but I propose with the indulgence of Council to favour very shortly the remaining recommendations which the Committee has made, which His Members will find in the final paragraph of the Report.

(c) is, I think, a very small one. The original Bill contained a proviso that neither the General Manager of the Kenya and Uganda Railways and Harbours nor the Director of Public Works should be eligible for membership of the Board. That proviso, Sir, the Committee have recommended should be deleted, but there is no intention on the part of Government to appoint either of those gentlemen as a member of the Board. The Committee felt, however, Sir, that the time might come when transport and the road system of the Colony developed in the best interests of the coordination of transport throughout the Colony as a whole it might be of very great advantage to the Colony to be able to have the services either of the General Manager of the Railway or of the Director of Public Works. Until that time comes, Sir, there is no intention to appoint either of

those gentlemen. If the original proviso had been retained it would have been impossible at any time without amendment of the legislation to take advantage of their advice and assistance on the Transport Board.

The further recommendations in that paragraph, Sir, (b) and (c), are necessitated by what I endeavoured to explain on the second reading—the fact that the Bill was published without complete overhaul, an overhaul which was necessitated by the decision of Government to limit the scope of the Bill to competition with the Railway. (b) and (c) of the recommendations and the last one, Sir, (r) on page 5 put that position, I hope, right.

Recommendation (d) substitutes for the original clauses 6 and 7 a comprehensive omnibus clause which is modelled on the corresponding provisions of the recent English legislation of 1930. That, I think, hon. Members will admit is certainly an advantage because it will make available to the Board in the performance of their duties the decisions of the English Traffic Commissioners for the various traffic areas throughout Great Britain on exactly similar points. Where we can have the advantage of a volume of decisions such as is rapidly growing throughout Great Britain it is, I think, manifestly in the interests of this Colony that our wording should be the same so that those decisions can be construed in the light of local conditions and applied where possible. The proviso to clause 7 of the Bill as read a second time that the Board should not be entitled to refuse a licence merely because the Railway is adequate to carry the goods in the Colony is perpetuated in this new clause.

Recommendations (f), (g) and (h) deal with the question of insurance. The original clause dealing with insurance was taken verbatim from our local Traffic Ordinance which in turn repeated the wording on the question of compulsory insurance of the English Traffic Act of 1926. Experience on the road of five years in the practical working of that English Act has shown that the wording is obscure, difficult of interpretation, and has given rise to many practical difficulties. Therefore, Sir, the English Act of 1930 has revised the same section in much more clear and lucid language. The representatives of local insurance companies appeared before the Committee and pressed for the adoption in our local legislation of the most recent English provisions on the subject. In that request, Sir, the Committee have given effect in those recommendations. The new legislation makes no real change in the position regarding compulsory insurance whatsoever, except that the insurance of persons will not cover those employed in and about the vehicle and the insurance of goods will not

compulsorily cover goods carried on the vehicle, and further here is a proviso that in case of claims arising out of an accident for damage done to the goods of a third party, the claim should be limited to £1,000. There is, of course, Sir, I interpret at this moment, no reason at all why any person operating a vehicle under this Ordinance should not take complete cover for his own goods. I am dealing here only with that which he is compelled to do. He is, of course, perfectly free to effect as full and comprehensive a policy of insurance as he desires to take out.

There is a new provision, Sir, in recommendation (b) substituted for the previous provision that a licence should be annual and should expire on the 31st day of December of the year in which it is issued. It was represented by the insurance companies, Sir, that that would entail, because a licence has also compulsorily to incur considerable additional work to them and additional trouble to everyone concerned. Their policies, of course, run for twelve months from the date of issue. The British legislation on the similar subject provides for a licence which runs for twelve months from the date of issue and that is the provision which we now recommend should be adopted in our local legislation. Also, the licence and the insurance policy will be co-terminous and there will be no unnecessary work cast either on the Board or on the local representatives of the insurance companies, nor will additional expense be cast on applicants for licences by reason of the fact that they will not now have to take out insurance policies at, of course, greater premium charges for a portion of the year.

It is also provided in the next recommendation, Sir, that the licence may be transferred provided always that the vehicle to which the licence is to be transferred is of no greater capacity than the vehicle originally licensed.

With recommendation (c) I have already dealt.

Recommendation (d) exempts from the purview and scope of the legislation vehicles used in connection with the travelling of persons on a temporary visit to the Colony. I think, Sir, the limits made are obviously ones which fit in the interests of the Colony to relax, and to that exemption, Sir, I am quite sure the hon. Member will take exception.

The next recommendations, Sir, deal with entirely new classes which hardly call for comment. They deal with obvious subjects, a vehicle has to have a mark showing its licence, a policy must have power to call upon the driver or owner to produce his licence and also his policy of insurance, the forger of any document necessary under this licence constitutes an offence.

Finally, Sir, in recommendation (g), we find in the rule-making powers a further power to prescribe for the punishment of members of the Board in respect of their duties.

The schedule has been re-cast, Sir, in the light of what I have already said about the addition of an extra scheduled point in Maunabo and the limitation of the scope in the first instance at least, of the restriction to the road from Maunabo to Maluru.

There are the points dealt with, Sir, and the recommendations embodied in this Report which I am happy to say is to all intents and purposes a unanimous Report. Although, Sir, both my friend the hon. General Manager of the Railway, and the Noble Lord the hon. Member for Birk Valley, and the hon. Member for the Coast, have put in short reservations by the 15th of the same time when the Report will have been adopted, I do not think it is necessary for me at least at this moment, essentially to deal.

Before I close, Sir, I would wish to say only two things more. It is admitted, Sir, it is recognized by Government that this legislation is experimental. I do not think that anyone here compelled with it has ever attempted to put it higher than that. It is a subject which has taxed the ingenuity of the Governments of most countries in the world. It has to be dealt with in different ways in different parts of the world and it cannot be and certainly will not be on this side of the House, Sir, represented as anything more than experimental. There is no reason at all why different means should not some day be adopted to deal with this problem. There is at least room in this legislation the latitude to add further scheduled points if this particular method of dealing with the problem proves by the aid of past and practical experience to be a sound one but there is the suggestion that this will be a costly and inevitably stand the test of time and practical experience but it will, I hope hon. Members will agree at least, at least, I do hope the hon. Members will agree with me that it can only be in the light of the experience which we gain from the practical working of this that we can see that degree of assurance which will enable us really to tackle the problem and when occasion to do so arises.

The other point, Sir, the last, I must be held in certain quarters in the Colony that the object of this Bill is to allow high licence fees for the privilege of running a motor car and necessarily involve a corresponding obligation on the part of Government to maintain these roads in a high state of efficiency. If anyone does cherish such a hope, Sir, I must disillusion him. The road expenditure of the Colony, Sir

will be recalled as heretofore in accordance with the needs of the different parts of the Colony and without any relation either express or implied to the provisions of this legislation.

I beg to move that the Report be adopted.

The Hon. T. D. H. Bruce (Solicitor General): Your Excellency, I beg to second.

His EXCELLENCY: The question is—

That the Report of the Select Committee on the Carriage of Goods by Motor (Control) Bill be adopted.

The Rt. Hon. LEAH DELANEY: Your Excellency, I am not going to say much of this Bill. I said a few words on it the other day. The only thing I wish to say is this: what I have signed the Report because I believe that it is the best method that can be adopted of which we can get agreement, although I personally hold other opinions as to what other means might have been adopted if we could have not arrived at the subject.

For reasons given in the statement made by the hon. mover of the motion that Government does not intend necessarily to make a second roadway in addition to the Railway from the Coast to Nairobi has quietly disappeared in the subject's good death.

I am quite sure of one thing. So that if the Bill does not carry, but what it is intended to carry out, which is to do away with unfair competition with the Railway, it will have to be altered in the near future. We have strained the resources of this country to an extraordinary degree to build one form of State transport right throughout the country to the borders of Uganda and to my mind it would be a calamity if the Railway, which everybody who pays the high rates on the Railway must have built up its branch lines and so on should be not only because of the unfair competition against the Railway by motor transport which is not a common carrier and which therefore is simply taking the cream off the traffic and making an unfair competition with the Railway. It should just like to add again what I said before. So that after all £100,000, which is the amount which the Committee believe is being lost to the Railway by this competition at the present moment, is a very large sum of money. That is the profit which the Committee believe is being lost to the Railway by this competition at the moment. That amount in the past has been returned in rates and in respect of the year 1929, for instance, and last year, I think, £90,000 was returned in rates. It is perfectly

Telegram from the Governor of Kenya  
to the Secretary of State for the Colonies.

Dated 9th September 1921. Received 4.55 P.M. 9th September.

No. 283

My Despatch of 15th August No. 471.

Authenticated copies of Carriage of Goods by Motor (Control) Ordinance are being sent by air mail on 14th September and I should be most grateful if His Majesty's notice of non-allowance if approved could be signified by telegram because it is most desirable to bring the Ordinance into operation at the earliest possible moment in order to prevent further heavy losses of railway revenue.

to be inserted

902

Please state what are  
the usual licence fees for  
motor cars etc

J. H. Allen

2/9/31

Mr. Allen

the licence fees for motor lorries would  
appear to be as follows:-

	Sh	cts
For a motor vehicle with pneumatic tyres, of weight exceeding 1,500 lbs. in tare weight	20	00

For motor vehicles with full or half track, irrespective of the weight	10	00
--	----	----

For motor vehicles with full or  
half track, irrespective of the  
weight, the above rates to be increased  
by twenty-five per cent

For motor vehicles with metal tyres,  
double the above rates.

For trailers for motor vehicles,  
half the above rates.

For licences for a half year,  
fifty-five per cent of the  
annual rates

For quarterly licences, thirty per cent  
of the annual rates.

In addition to the rates specified in  
paras. (1) and (2) above, a licence  
of \$2.10 per passenger for each  
passenger which the vehicle is  
licensed to carry shall be paid by  
the owner of a public service  
vehicle.

J. H. Allen  
9/9

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KENYA



GOVERNMENT HOUSE  
NAIROBI

No 471

KENYA

15 August, 1931.

RECEIVED  
7-SEP-1931  
COL OFFICE

My Lord,

(No. 1)

With reference to my despatch No. 21 of the 25th July, 1931 in which I informed Your Lordship that the Select Committee's report on the Carriage of Goods by Motor (Control) Bill was awaited, I have the honour to transmit a copy of that Report for Your Lordship's information.

The Report was considered in Executive Council on the 14th August, when the amendments proposed to the Clauses and Schedule of the Bill were adopted, and I have desired the Attorney General, when moving the adoption of this Report in Legislative Council, to emphasise that Government had no intention of devoting special funds to the road or roads affected, and further to state that the Bill is an experimental measure and that, if it fails, the problem will have to be re-examined in the light of the experience gained.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant.

H. D. Martin

BRIGADIER-GENERAL  
GOVERNOR

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON. S.W.1.



COLONY AND PROTECTORATE OF KENYA

REPORT OF A SELECT COMMITTEE  
OF THE LEGISLATIVE COUNCIL AP-  
POINTED TO CONSIDER AND REPORT  
ON THE PROVISIONS OF A BILL TO  
PROVIDE FOR THE LICENSING AND  
REGULATION OF THE CARRIAGE  
FOR REWARD OF GOODS BY MOTOR  
VEHICLES OVER THE ROADS OF  
THE COLONY

# Report of a Select Committee of the Legislative Council appointed to Consider and Report on the Provisions of a Bill to provide for the Licensing and Regulation of the Carriage for Reward of Goods by Motor Vehicles over the Roads of the Colony

Yours Excellency

We, the members of the Select Committee appointed to report on the Carriage of Goods by Motor (Control) Bill, have the honour to report that we met on Wednesday, 21st July 1931, and held further sittings on 2nd and 8th August. The evidence of eight witnesses, representing the carrying industry, the insurance companies of the Colony, the Nairobi Association, the Indian National Congress, and the Motor Transport Association of Mombasa, appeared before the Committee and gave evidence, and we also received representations in writing from the motor lorry drivers of Mombasa.

The main arguments advanced on behalf of those who are directly and financially interested in the motor transport industry were—

(i) The loss occasioned to the Railway Administration by motor competition had been greatly exaggerated, and the annual loss probably did not exceed £25,000 a year.

(ii) That the imposition of the licence fees suggested in the draft Bill would seriously cripple it, did not actually kill the industry, and that though the Railway would gain about £20,000 a year on freight charges, Government and the Railway Administration would lose more by customs duties on vehicles and accessories, duty on petrol, local fees, and on the transport of vehicles, parts and petrol, the present incentive to the development of the motor transport industry would cease, and lorries would be taken off the road.

(iii) That the loss to the Railway Administration caused by motor competition is so small as to be almost negligible in comparison with losses due to other causes, especially losses incurred on passenger traffic, and on the carriage of maize and cotton seed, and that the Railway can and should meet existing competition by more economical working and by a revision of the present rating policy.

(iv) That the benefit of the cheaper freight by motor transport is passed on to the consumer.

In support of the first argument we were told that there were in Mombasa 50 lorries engaged in the transport of goods to sundry and places beyond that of these 50, that not more than 50 were fit for service at any time, and that these lorries did on an average 25 trips each a year. Thus, it was estimated that 1,250 trips a year, and we were invited to accept the proposition that the freight on each trip was £16, from which we arrive at a total of £20,000, which, it was argued, represented the gross loss to the Railway.

44. The witnesses who appeared on behalf of the Motor Transport Association of Mombasa were not agreed either as to the number of transport vehicles used in competition with the Railway, and giving the figure as 200 while others placed it at about 150, or as to the quantity of petrol consumed, for one gave the large figure of 500,000 gallons, while others suggested only 500,000 gallons. If we accept the smaller figure, and assume further that the average petrol consumption is ten miles per gallon, we get an annual run of three million miles. Assuming further that each lorry carries 500,000 lbs. one way and returns empty, we arrive at a figure of 2,500,000 ton-miles carried by motor transport in the course of a year, representing the loss of freight to the Railway Administration from this form of competition.

If we take an average railway freight of Sh. 1 per ton mile, we arrive at a cost of £112,000.

One witness stated that the ordinary employed 200 motor vehicles and that each vehicle averaged 24 trips a week. If 500 lbs. are the average load, we are on these figures 24,000 tons of goods carried.

The ordinary employed 1000 Class 1 cars on the Railway. Their load carrying capacity is 1000 lbs. If we take 200 lbs. on Sh. 240 per ton, we are allowing Sh. 48 per ton as the cost of carriage. If we take 200 lbs. on 22 trips a week, the fee for parcels is 22 cents a ton a month to the Railway. Sh. 240 per ton.

On that basis we are at a railway freight represented by the carriage of 200 tons of goods by rail at an amount of £100,000.

The second line of argument is not, in our opinion, impressive. We are not satisfied that the sale of licences for motor transport in paragraph 9(3) of this Report is sufficiently heavy to be prohibitive. On the contrary, we are convinced that a well-organized motor transport business will still be able to operate at a profit after paying the proposed licence fee and taking out the requisite insurance policy. If, for the sake of argument, we take a 30 cent lorry running between Nairobi and Mombasa and doing 22 trips a week, the licence fee of £50 in 12 months represents a cost of 25 sh a year together amount to an additional cost of 25 per cent. Such a lorry carries 3,360 lbs. or 32.0 multiples of 100 lbs. The additional cost therefore amounts to almost exactly Sh. 3 per 100 lbs. which, added to the prevailing freight charge of Sh. 42 per 100 lb. from Mombasa to Nairobi gives us Sh. 45 per 100 lb. The Railway rate for Mombasa to Nairobi are: Class 1, Sh. 18/34 per 100 lb. and Class 2, Sh. 13/42 per 100 lb. or an average of Sh. 15/834 taking no account of the cost of delivery at the place of assignment or collection. If the margin of 20 per cent between the cost of vehicles and a larger carrying capacity than is provided for is taken into account, the Railway rate is not, in our opinion, prohibitive.

As regards the third argument, we cannot agree. It is not clear from the given in paragraph 4 of this Report the loss sustained by the Administration from this cause is great, nor in any event would it be a logical argument that the Railway should not endeavour to reduce the losses caused by this competition because it sustained other losses. Nor can we see the question whether the Railway is officially and economically run, and whether there is any justification for a departure from the setting rating policy is not within our terms of reference. But we would point out that the representatives of the Motor Transport Association of Mombasa submitted that if any change in rating policy led to the substantial reduction of rates on goods in Classes 1 and 2, their business would be completely and effectively ruined.

The fourth and last argument is one which, if those who promulgated it had had time to substantiate their case, we could only have treated as a matter for consideration. After the Committee completed its public enquiry, of which witnesses had been invited to furnish evidence, the only further motor transport information was received in the form of a letter from merchants in Nairobi, a translation of which is appended hereto. The memorandum states that economic instances of reduction in cost to the consumer and the benefit to the public in general were alleged to have been reduced to a minimum in consequence of cheaper motor freight works "Van" and "High" sources.

Turning now to the detailed provisions of the Bill, we have the honour to recommend that the Bill be amended in the following respects:

(a) That clause 15 be amended by placing a full stop after the word "nominate" in the first line of the clause, and by relating all the words after the said word "nominate".

While we agree with the Committee's view, reported by your Excellency on 10th May 1931, that the General Manager of the Kenya and Uganda Railway and Harbours Administration should be empowered to grant licences to the members of the Transport Control Board and that members of the Board should not feel that a licence should be granted to them unless they are satisfied that a licence can be achieved administratively, we are not in favour of the proposed amendment of clause 15. We are in favour of the continuation of road services and of the railways as a means of the transport of goods and passengers, and of the continued operation of the railway service. We are in favour of the continued operation of the railway service.

(b) That clause 16 be amended by placing a full stop after the word "nominate" in the fourth line of the sub-clause, and by relating all the words after the said word "nominate" to a place different from any other scheduled place.

(c) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(d) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(e) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(f) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(g) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(h) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(i) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(j) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(k) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(l) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(m) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(n) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(o) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(p) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(q) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(r) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(s) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

(t) That clause 16 be amended by inserting after the word "nominate" in the second line of the clause the words "for any scheduled place, for any place or any other scheduled place" and by relating the following words "nominate" and "nominate" respectively.

- (i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of the person insured by the policy or of bodily injury sustained by such person arising out of and in the course of his employment; or
- (ii) liability in respect of the death of or bodily injury to persons being carried on or upon or entering or getting in or alighting from the vehicle at the time of the occurrence of the event out of which the claim arises;
- (iii) liability in respect of loss of or damage to property being carried in or upon the vehicle at the time of the occurrence of the event from which the claim arises;
- (iv) any contractual liability.

(7) That clause 9 of the Ordinance and the following sub-clause be substituted therefor:

"(2) Any condition in a policy issued for the purposes of the preceding sub-section providing that no liability shall be incurred by the policy or that any liability arising thereunder, in the event of some specified event, shall be limited to claims under the policy shall be of no effect in connection with such claims as are mentioned in the preceding sub-section, provided things being done or omitted to be done after the happening of the event insofar as such a policy shall not be required to cover liability in respect of injury to the property of any person caused by or arising out of the use of the vehicle on a road in excess of a sum of one thousand pounds in respect of any one claim or number of claims arising out of any one event."

(8) That the following sub-clause be added to clause 9 as sub-clause (b):

"(b) If a policy of insurance required by this section lapses or otherwise becomes invalid, the holder of such policy shall forthwith notify the Board, and failure to do so shall be an offence under this Ordinance."

(9) That clause 10 be deleted and the following clause substituted therefor:

"9. Every licence shall, unless previously revoked, continue in force for one year from the date on which it is expressed to take effect. Provided that if on the date of the expiration of a licence proceedings are pending before the Board on an application for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until such application is disposed of."

(10) That the following clause be inserted as clause 10:

"10. Any person to whom a licence has been granted in respect of any vehicle may at any time during the currency of such licence apply to the Board to transfer such licence to another vehicle, provided that such other vehicle is not of a greater carrying capacity than the vehicle in respect of which such licence was granted, and the Board in its discretion may approve or refuse such transfer or may, subject to such conditions as they may think fit:

(a) That clause 11 be deleted and the following clause substituted therefor:

"11. Mombasa, M'Kikindu, Nairobi and Nakuru are hereby declared to be scheduled places. The Governor, on the advice of the Board, may from time to time by notice in the Gazette declare any other place to be a scheduled place."

(b) That clause 12 be amended by substituting the word "place" for the word "point" where that word occurs twice in the first sub-clause and three times in the second sub-clause.

(c) That the following clause be inserted as clauses 13, 14, 15 and 16:

"13. Notwithstanding the provisions of section 12 of this Ordinance the Board may grant a free licence in respect of any vehicle either generally or in respect of any particular journey and subject to such conditions as they may prescribe if they are satisfied that such vehicle is bona fide used for conveying supplies or equipment for persons on a temporary visit to the Colony. It shall not be necessary for an applicant for such a licence to comply with the provisions of section 8 of this Ordinance."

(14) (1) Marks indicating that a vehicle is licensed under this Ordinance shall be fixed on every vehicle so licensed in such manner as the Board may direct:

(2) If such marks or any of them be not fixed on a licensed vehicle in the manner directed, or if being so fixed, any of them are in any way obscured or rendered or allowed to become not easily distinguishable, the owner and driver of the vehicle shall be severally guilty of an offence under this Ordinance.

15. Any person driving a vehicle licensed under this Ordinance shall, on being so required by a police officer, give his name and address and the name and address of the owner of the vehicle, and shall produce the licence of the vehicle, and if he fails so to do he shall be guilty of an offence."

Provided that if within five days after the date on which the production of the licence was so required he produces the licence in person at such police station as may have been specified by him at the time his production was required, he shall not be convicted of an offence under this section by reason only of his failure to produce such licence to the police officer."

16. The owner of any vehicle licensed under this Ordinance shall, within five days of demand being made by any police officer or any person authorised in writing by the Board in that behalf, produce for inspection the policy of insurance effected under section 8 of this Ordinance in respect of such vehicle, and if he fails so to do he shall be guilty of an offence."

(17) That clause 18 be renumbered 17 and be amended by inserting the word "foregoing" before the word "provisions" in the second line of the clause.

(18) That the following clause be inserted as clause 18:

"18. If, with intent to defraud, any person (a) forges within the meaning of Chapter XXIV of the Penal Code any alteration of use or lends to or allows to be used by any other person a licence issued under this Ordinance or a policy of insurance required by this Ordinance; or (b) makes or has in his possession any document so closely resembling such a licence or policy of insurance as to be calculated to deceive,

he shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years."

(19) That clauses 14, 15, 16 and 17 be renumbered 19, 20, 21 and 22 respectively.

(20) That clause 23 be amended by inserting after the word "rules" the words "prescribing the fees and allowances to be paid to members of the Board and generally."

(21) That clause 17 be amended by inserting after the word "reward" in the fourth line of the clause the words "from any scheduled place or to a place beyond any other scheduled place."

(c) That the Schedule be added and the following substituted therefor:

#### SCHEDULE

Between	VEHICLES LICENSED TO CARRY		
	Up to and including 2 tons	Exceeding 2 tons but not exceeding 3 tons	Exceeding 3 tons but not exceeding 4 tons
Mombasa and Voi	30	40	60
Voi and Malindi	30	40	60
Malindi and Narobi	30	40	60
Narobi and Nairobi	30	40	60
Mombasa and Malindi	60	80	120
Voi and Nairobi	60	80	120
Malindi and Nairobi	60	80	120
Mombasa and Nairobi	90	120	160
Voi and Nairobi	90	120	160
Mombasa and Malindi	120	160	240

For each vehicle licensed to carry more than three tons, the fee applicable to a vehicle licensed to carry three tons, plus 50 per cent of surplus for every ton or part of a ton by which the weight which such vehicle is licensed to carry exceeds three tons.

(d) That the title of the Bill be amended by substituting the word "ertain" for the word "The" before the word "Roads".

We have the honor to be

Your Obedient Servants,

A. D. A. WA GREGOR,

H. T. MARTIN,

G. D. RHODES

(Subject to Reservation A below)

H. L. SELES,

DELMERS,

(Subject to Reservation B below)

T. J. O'SHEA,

R. W. B. ROBERTSON-EUSTACE,

(Subject to Reservation C below)

W. K. TUCKER

Nairobi,

24th July, 1931.

RESERVATION BY THE HONOURABLE MR. JUSTICE M. ANTONIO, JUDGE

OF THE UGANDA HAILWAY AND RAILWAYS

I am convinced that the regulation of transport of all kinds is to be the ultimate end of these Territories. Such has been found to be the case elsewhere, and there is no reason why these Territories should be the exception.

The regulation has been found necessary to prevent wasteful competition, whether between one form of transport and another, or between similar forms of transport. Wasteful competition of the latter type is as common as the former. Where competition is between two different forms of transport, other factors enter into the question, such as

(i) Economics—Other things being equal, the cheaper service should survive and the more expensive go out.

(ii) Service—If the convenience of the public is served, even though at greater cost, there may be justification for the existence of a particular form of transport.

(iii) Competition—Healthy competition is not a monopoly, unless suitably controlled, it may be dangerous. Wasteful competition is, however, expensive, and definitely destroys in the long run.

(i) and (ii) should be allowed free play, but regulation is necessary to control (iii).

I have openly asserted that the draft Bill is intended to protect the Railway against wasteful road competition. I support this intention only on the grounds of public convenience, as defined in clause 4 of the draft Bill, and the Railway case would be heard on—

(i) Economics.—Railway transport is a whole indubitably cheaper than road transport, even though, possibly, may not pay its full share of costs.

(ii) Service.—Road transport is not a better method of handling bulk commodities.

The Railway Administration, if a free agent, would require no aid to meet legitimate competition, but it is in the general interest of the country at present that certain commodities should be carried at low rates, so that others must be carried at correspondingly high rates. Were it not for this fact, motor competition would be destroyed, as stated at the end of paragraph 7 of the Report. Because of this fact, and because for a few years more such a policy is necessary and in the interests of the country, a whole, wasteful road competition with the Railway must be completely eliminated. Any failure to do this will force an immediate alteration in rates policy.

Paragraph 4 of the Report appears to support the continuance of wasteful competition, thus negating what I understand to be the object of the Bill.

Clause 2 of the draft Bill introduces a condition which, if acted upon, is completely contradictory to clauses 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. The schedule of licences is intended to place a tax on motor transport in order to ensure its paying a proper share of its cost to the country. It is justifiable, if it is intended as a substitute to clause 4, and to enable a Board to grant a license in spite of clause 4, then it is contradictory to the intention of the latter clause, where public interest is the sole qualification.

If clause 4 is not to be enforced, the fees in themselves will have the ultimate if not immediate effect of encouraging a better organized form of competition, and so will destroy the expressed object of the Bill. At most, it will have a delaying effect only.

By the terms of the draft Bill, control is to be exercised over carrying roads only. Control to prevent wasteful competition is required on all roads. No responsible organisation would venture to provide a modern and efficient road service, even where it is in the public interest to do so, without

protection against wasteful competition. With some form of control the Railway itself might be prepared to undertake such services and other companies would undoubtedly come forward. Without control, co-ordination and co-operation, as between road services themselves and as between road and rail services, the only effective way to make full use of the advantages of both types, is impossible.

I agree with the recommendations of paragraph 9 (a) of the Report. I must, however, dissociate myself from the last sentence of this paragraph. I am definitely of opinion that the ideal Board is one composed of impartial and disinterested individuals, capable of weighing the evidence of interested parties who would appear before them, and of giving judgment based on public advantage or convenience. Before such a Board the Railway itself would be prepared to submit its proposals for extensions and branch lines.

I have signed the Report, subject to the above reservations, and will support the Bill because it contains clause 6 (1) (a), (b), (c) and (d), and is therefore, in my mind, a step in the right direction.

G. D. RHODES,

General Manager.

KISUMU, 10th JULY 1931. THE HONOURABLE LORD DELAMERE AND THE HONOURABLE MRS. R. W. B. ROBERTS & BUSTAGE.

I am signing this Report because, although I do not altogether agree with some of the matters put forward by the General Manager, I believe it to be the best chance in which agreement can be reached, and that experience only will prove if the Bill will have the effect it sets forth to carry out.

DELAMERE.

I agree.

R. W. B. ROBERTS & BUSTAGE.

10th July 1931.

#### MEMORANDUM FROM INDIAN MERCHANTS

[Translation]

Nairobi, the 7th July, 1931.

The Honourable the Attorney General and the members of the Select Committee of the Legislative Council on the Carriage of Goods by Motor (Control) Bill, 1931.

We, the undersigned wholesale and retail merchants of Nairobi, with a view to get your acquaintance with the position of affairs, do hereby certify that the greatest benefit to the plying of motor lorries between Mombasa and Nairobi for the transport of goods accrues, particularly to the natives, from the saving of time and cost between the mode of transport of goods by motor lorry and by rail. The cost of transport by motor lorry is about 35 per cent. less than by rail, both by retailers and wholesalers, after calculating the difference, and the saving is passed on to the consumer.

Another advantage is the delivery of goods from door to door—a very great advantage from our point of view. The claim for breakage, loss, etc., is deducted at once from the fare to be paid to the transport worker on the spot, which is a great convenience. This method of transport is viewed as very important and contributory to the benefit of the country. We hope, therefore, that you will put up very strong recommendations to the Government not to accept the policy of stopping the transport of goods by motor.

The loss accruing to the Railway from the continuance of this method of transport is very insignificant. This can easily be recovered by small additions to the freight on other classes of goods. We look upon the majority report of the latest Committee on this question against this fair competition and economic means of transport with very great disquiet and apprehension.

We are, yours, etc.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

KENYA

No. 434

RECEIVED  
AUG 1931  
GOVERNMENT HOUSE

25 July, 1931

7/30

My Lord,

With reference to Your Lordship's despatch Kenya No. 448 of the 26th June, enclosing copies of a telegram from Mr. Sheth, President of the Indian Association at Mombasa and a letter from Mr. Polak on the subject of licence fees on motor transport, I have the honour to refer to Sir Edward Grigg's despatch No. 313 of the 20th May, 1930 on the subject of Road and Railway competition in this Colony and to enclose, for Your Lordship's information a copy of the Report of the Committee referred to in paragraph 4 of the enclosure to that despatch.

That Report contained, as an Appendix, a draft Bill, which incorporated the Committee's majority recommendations. On consideration of this draft Bill in Executive Council it was decided to delete clause 13 and the second Schedule, and to make certain minor amendments consequent upon these deletions. For the reason which prompted this decision I would refer to the Attorney General's introductory speech at page 293 of the enclosed uncorrected copy of the Debate. With these alterations the Bill was read a second time in Legislative Council last month, and was referred to a Select Committee of Council. I will communicate with Your Lordship further on the receipt of its report and, in the meantime, transmit a copy of the Bill in question.

I have the honour to be,  
My Lord,  
Your Lordship's most obedient, humble servant,

BRIGADIER-GENERAL,  
G. O V E R N O R.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
L O N D O N, S.W.1

R E P O R T  
O F  
A COMMITTEE TO CONSIDER THE MOTOR  
SERVICES BILL.

Your Excellency

We were appointed members of a Committee to consider the Motor Services Bill and the principles underlying it, and to report what action, if any, is necessary or desirable to control competition between rail and motor services, whether by legislative or other measures.

We have held sessions at Mombasa and at Nairobi, and have taken evidence from fifteen witnesses, and received and considered memoranda from a number of public bodies and individuals in the Colony.

The position which exists today may be stated very shortly. Owing to the opening of a road between Mombasa and Nairobi which for the greater part of the year is accessible for motor traffic, and owing to the fact that the accepted railway rating policy necessitates the charging of a high rate on commodities which are included in Classes I and II in the Railway tariff, most of which articles, e.g., blankets, cloth, tobacco, cigars and cigarettes, confectionery, wines and spirits are of small bulk and easy to transport, there has arisen in recent years a steadily growing motor transport industry, chiefly centred in Mombasa, which is enabled, by carrying only goods in these two classes, materially to undercut the railway charges and still show a substantial profit.

The rate charged by the railway for conveyance from Mombasa to Nairobi of Class I goods is Shs. 18/24 per 100 lbs., for Class II goods it is Shs. 15/40. Goods in these classes are carried at railway risk, and the average transit time is stated by the Railway Administration to be 56 hours. By motor transport these goods are carried at a rate of from Shs. 12/- to Shs. 14/- per 100 lbs, some of which is a different insurance.

insurance on the goods they carry, and though the transit time is at best over 48 hours, this represents the time of transit from a consignor's store to the premises of the consignee, and there are probably compare not unfavourably with the transit time by rail.

We are informed that the motor rates are fixed at a figure which should provide even if the vehicles used have to return from Nairobi to Mombasa empty, but in practice low freights for the whole or part of the journey are obtained, for it is the admitted policy of motor owners to seek on the Mombasa to Nairobi, any goods that are offered, the charge in every case being fixed at a rate slightly below the railway charge for the particular class of goods carried.

In introducing the Railway Estates for 1951 the General Manager, Kenya Railways, stated and observed that they have completely neglected such provisions that he calculated that the loss thereby occasioned to railway revenue amounted to £50,000 a year in respect of goods carried from Mombasa to Nairobi. The General Manager has since informed us that that figure is an underestimate. It has become in Mombasa of seventy nine motor lorries regularly engaged in this traffic, and the General Manager has informed us that a count has shown as much as 350 tons of goods going by motor lorry from Mombasa to Nairobi in a month.

Another aspect, but by no means negligible, is that the railway rates on motor vehicles are high, approximately £16 to Nairobi, £24 to Eldoret and £30 to Kampala. It is therefore becoming increasingly common for purchasers of motor vehicles to buy in Mombasa and to drive the vehicle to its destination by road, usually taking any freight that offers at rates which undercut the railway.

8. The draft Motor Services Bill proposed to deal with the situation which we have briefly indicated in the foregoing paragraphs of this Report, by empowering the General Roads and Traffic Board to examine every application for a licence to carry either passengers or goods for hire or reward on any road scheduled by the Board, and to grant a licence if satisfied

- (a) that the grant of the licence will be in the public advantage;
- (b) that the grant of the licence will not result in unreasonable damage to roads; and
- (c) that between the points to be served by the applicant existing facilities for the conveyance of passengers or goods (as the case may be) are inadequate.

If not satisfied on all these points the Board may refuse a licence.

9. The General Manager has told us that in his opinion these provisions will be of no service to the railway unless the Board are prepared to hold in every case that existing railway facilities for the carriage of goods between any Mombasa and Nairobi are adequate, and so refuse every licence or in other words to prohibit on the Mombasa-Nairobi road the carriage of goods for hire or reward.

10. We would observe firstly that we disapprove of giving any such powers to a Board of which the General Manager is a member - a view which the General Manager emphatically shares - and secondly that no Board should have any power completely to prohibit motor traffic for hire or reward on any road in the Colony except on the score of unreasonable damage to road surface, a power which is already given by the Roads Protection Ordinance, 1924.

No. 16 of 1924.

11. The effect of prohibiting the carriage of goods by motor between Mombasa and Nairobi would be to give the Railway Administration practically a monopoly of the carriage

carriage of goods, for by reason of their taper rate and their distribution rates from Nairobi, Eldoret and Kisumu, the administration can compete on more equal terms with motor competition from any point other than Mombasa. We are strongly of opinion that there is no justification for giving any such monopoly, but that on the contrary fair healthy competition is as good for the railway as it is for the community generally.

12. The present competition, however, is definitely unfair, and the situation that exists today calls for urgent remedial measures.

13. The Colony depends, and will so far as can be foreseen, continue to depend for its progress and prosperity entirely on agriculture. In the Kenya and Uganda Railway the Colony has a State asset, built up at a cost of many millions, which must in the Colony's best interests be safeguarded. So far as the movement of the bulk agricultural products on which the Colony depends is concerned no other system of transport can within any reasonable period of time replace the railway. It is solely because of the accepted rating policy of the Railway administration, a policy which encourages local development by charging rates based on the capacity to pay and not on the actual cost of haulage, that motor transport is enabled to compete with the railway as it does in the carriage of imports, and that competition has now reached a stage at which it definitely constitutes a menace to the financial stability of the railway, and, by implication, to the possibility of continuing the present rating policy.

14. Furthermore the evidence at our disposal tends to show that, except in a few isolated instances in Eldoret and in Kampala, the public generally derive no benefit from this alternative and cheaper form of transport, for goods conveyed by motor are almost invariably retailed at the same rates as goods conveyed by rail.

15. If the present unrestricted and uncontrolled competition is allowed to continue the railway, in order to meet it, will be forced to reduce its charges on high rated commodities. Such a reduction will entail a corresponding increase in its charges for the conveyance of low rated traffic, thus reducing agricultural profits or possibly preventing the production of bulk products for export.

16. Cheap railway rates, on which the <sup>of</sup> agricultural prosperity/the Colony so largely depends can only be maintained if the railway is protected against wasteful and uneconomic competition. If such a measure of protection is given to the railway the consuming public will not suffer to any appreciable extent, and of the necessity of safeguarding an essential State asset we submit there can be no question whatsoever.

17. We recommend -

- (i) that a statutory board be established consisting of not less than three or more than five members, and that neither the General Manager, Kenya and Uganda Railways and Harbours, nor the Director of Public Works should have a seat on the board;
- (ii) that Mombasa, Voi, Nairobi, Nakuru, Eldoret and Kisumu be declared to be scheduled points and that the Governor, on the advice of the board, may declare other places to be scheduled points;
- (iii) that all applications to convey goods for hire or reward from any scheduled point to any other scheduled point be considered by the Board, which may grant or refuse a licence after giving due weight to the considerations set forth in Clause B of the draft Motor Service Bill, but that the Board may not refuse a licence merely because existing railway facilities between the proposed transit points are in their opinion adequate.

(17) that there be paid for a licence to convey goods between scheduled points the following fees -

For each lorry licensed to carry	up to 30 cwt. £	from 30 cwt to 2 tons £	from 2 tons to 3 tons. £
Between Mombasa and Voi			
Voi and Nairobi			
Nairobi and Nakuru	15	60	90
Nakuru and Eldoret			
Nakuru and Kisumu			
Mombasa and Nairobi			
Voi and Nakuru	90	120	180
Nairobi and Kisumu			
Nairobi and Eldoret			
Mombasa and Nakuru			
Voi and Eldoret	135	180	270
Voi and Kisumu			
Mombasa and Kisumu	180	240	360
Mombasa and Eldoret			

Over 3 tons, half the 3-ton rate for each ton or part of a ton in excess of 3 tons.

18. Licences should be granted not in respect of the nominal load capacity of the lorry, but in respect of the actual maximum weight authorised to be carried, so that, for instance, a lorry licensed for a lorry to carry two tons, to carry more than that amount.

For such an offence a court should have power not only to punish those responsible but also to suspend the licence of the vehicle for a stated period.

19. We recommend further that the conveyance by motor of goods for hire or reward should be controlled generally throughout the Colony, that all such transport be done under annual licence from the Board, and that the following licence fees be payable -

- (a) For a licence to carry the owner's own property or own agricultural produce Free

(b) For a licence to carry for hire or reward agricultural produce and agricultural requirements

(c) For a licence to carry any goods for hire or reward

No. 26 of 1928.

20.

Section 30 of the Traffic Ordinance, 1928

prescribes in respect of a vehicle licensed for the conveyance of passengers that every applicant for such licence must effect third party insurance. There should, in our opinion, be a similar obligation on every applicant for a licence to carry goods between scheduled points.

21.

Your Committee has not dealt specifically with the question of passenger traffic, beyond prohibiting such traffic on vehicles carrying goods for reward. The Traffic Ordinance, 1928, in our opinion, contains all the necessary provision for regulating passenger traffic and ensuring the requisite degree of safety, but we suggest that something yet remains to be done in the direction of the more stringent application of the provisions of that Ordinance regarding the inspection and the insurance of such vehicles.

We append hereto a copy of a draft Bill embodying our recommendations.

We have the honour to be,

Your Excellency's

most obedient servants,

Nairobi

A DISSIDENTING MINUTE BY MR. U. K. OZA  
ON  
THE REPORT OF THE COMMITTEE TO CONSIDER THE  
MOTOR SERVICES BILL.

Your Excellency,

I very much regret the necessity of my having to write this dissenting minute.

2. The Committee of which I have the honour to be a member was appointed to consider the principle involved in the Motor Services Bill, and also the provisions of the Bill.

I am unable to state that the principle of the Bill is sound or just. In my opinion it is bad and unground inasmuch as it seeks to check the growth and development of private enterprise and attempts to bolster up two very weak and inefficient institutions of this Colony - the Railway and the Farmer.

4. It has been stated during 1930 that the Kenya and Uganda Railway suffered a loss of about £56,000 on account of motor competition between Mombasa and Nairobi. The General Manager of the Railway stated that this was an underestimate.

5. It has also been stated that it is solely because of the accepted rating policy of the Railway Administration, a policy which encouraged local development by charging rates based on the capacity to pay and not on the actual cost of carriage, that motor transport is enabled to compete with the railways in the carriage of imports, and that competition has now reached a stage where it definitely constitutes a menace to the financial stability of the railway, and by implication to the possibility of continuing the present rating policy.

6. Both these statements are incomplete. The total loss of the Railway Administration during the year 1929-30 was £400,000. Granting that the figure £50,000 was an underestimate, by about £10,000 the total contribution of Motor Transport to the Railway loss is only one-seventh of that loss. The Motor Transport Workers of the Coast furnished approximate figures indicating what loss their competition could possibly

cause to the Railway. According to them that loss between Mombasa and Nairobi could not have exceeded £18,000 to £20,000. The fact that the total loss of the Railway Administration is by far much bigger, necessarily implies that motor competition plays a very minor part in making it up.

7. Because this is so, it is not right that the first attack and the sole attack should be concentrated on motor transport workers. The loss to the Railway caused by them is part of a very much bigger figure which requires careful public investigation and the degree to which each component factor causing that loss is responsible for it should be determined. The loss should then be distributed amongst the various component agents according to the degree to which each occasions loss.

8. Proceeding along this line it cannot be denied that the rating policy of the Railway Administration is also responsible for a much greater degree the total loss of the year. It is admitted that the rates are based on the capacity of the farmer to pay and not on the actual cost of haulage. I wish to grant that the Colony is entirely dependent on agricultural produce for further development, but I cannot accept that agriculture should be subsidised in the way it is being done in this Colony. The Commercial, the Transporting and the Consuming sections of the Community are as important as the Producing section and there is a limit up to which the Producing section can be assailed by imposing a degree of sacrifice on the other sections of the public. That limit has long ago been reached in this Colony.

9. The Railway Rating Policy is part of this unsound and uneconomic policy. Its effect upon the financial position of the Railway has been disastrous. In order to avert this disaster, an attempt is being made to make the Motor Transport Workers the scapegoats and the first victims. This is evidently unjust. The contribution of the agriculturists to the total loss of the Railway should be investigated and determined.

and/

and the agriculturist should also be called upon to share to a just and a reasonable extent the burden borne by the community in general.

10. In order to determine the just proportion of burden that may be imposed on each section of the Community in order to complete the Kenya and Uganda Railway on a sound financial footing, it is necessary to investigate fully the financial position of the Railway. Before the Motor Transport Workers are brought under a schedule of licences and other measures of control, it is essential that a commission representative of all communities in Kenya should be appointed to carry out a wide ranging enquiry into the financial working of the Railway and to suggest measures to effect economies in the administration, and to call upon the community in general for contributions a proportionate share to maintain financial soundness.

11. It will be theoretically just to maintain the present state of things, free competition between the Rail and the Motor. The Motor Transport Workers in fact deserve it. They came into existence in the course of things, firstly as every new development came into being in this recent century and secondly as the direct result of the Rating Policy of the Railway. They may not have served the agriculturist or the Railway but they are rendering a distinct service to commercial houses and dealers; they render their services in a direct and official way; they take charge of goods at the house of sale and give delivery on the doorstep of the purchaser and the evidence that the saving effected by Motor Transport is not passed on to the consumer has been controverted. No one concerned with the details of retail trade in the districts and the Native Reserves was examined, but it is evident that competition being as keen as it is, the smallest saving will be passed on to the consumer in order to effect a speedy sale. I am convinced that the African consumer of piecegoods will be penalised to a great extent by the proposal to tax motor transport. This sacrifice of the African consumer on the altar of uneconomic/

uneconomic and forced agricultural development is both uncalled for and unjust.

As stated above, free trade and competition with the Railway will be considered the just dues of the motor transport workers. In practice however the position is modified by the fact that till roads are better and motor transport more thoroughly organized, the Railway will be called upon to do the work of common carriers. Motor Transport can at present deal only with Class I and Class II goods. This makes out a case for the Railway being assisted to a certain extent but not for the agriculturist being subsidised in any undue degree. The principle of free competition may therefore undergo in this case a slight modification only on condition that the Rating Policy of the Railway Administration, uneconomic, unsound and disastrous should undergo considerable modification by being directed to levelling up the rates on agricultural exports to an economic minimum. The Commercial and Consuming classes are already bearing a heavy burden and the shape of extremely heavy passenger and goods rates in comparison to those in the other countries of the world: the motor transport workers are not being called upon to pay what is assumed to be their share of the burden and I do not see why the agriculturist should be excused from his share and permitted to act as a drag on a community that does not want to be drowned.

In order to save the Railway from ruin there should be first of all an earnest of justice a levelling up of rates on agricultural exports so that they should stand at an economic minimum. If it is then found that motor competition hits the Railway very hard a measure of tight control may be devised so as to reduce the difference between railway rates and motor transport rates to a reasonable figure. That figure must not be reduced to anything like nil. The Railway must not have a monopoly and there should always be sufficient scope for motor transport to grow and develop as roads and the country in general develop.

14. The Majority of the Committee have considered the problem of Road vs Rail as if it were a detached problem not connected with the general finances of the railway or the economic and industrial development of the Country. I have been unfortunate to do this. I cannot conceive of a Railway monopoly in this Country and I should like to see every section of the Community in Kenya shouldering its various burdens. In the ordinary course I should not have made any suggestions in regard to the form and degree of control that must be exercised in connection with Motor Transport. I am even at this stage distinctly of opinion that the form and degree of control suggested by my learned colleagues should not be considered until the Government have made up their minds to raise the Rates on agricultural exports to the level of an economic minimum.

15. After stating this I wish I could be in a complete agreement with my colleagues. I find that it is not possible. While it is evident that the General Manager of the Railway and the Director of Public Works should not be members of the proposed Board either directly or indirectly, it is necessary that the character of the Board should be representative of the unofficial sections of the Community. The schedule of licensing fees that forms part of the suggested legislation was drawn up by the Committee on certain postulates which require more careful examination. In my opinion the fees suggested virtually constitute a charter of monopoly for the Railway and will effectively destroy all motor transport along the roads which the Committee had under consideration. If a certain measure of healthy competition is to be welcomed and preserved, the difference between the first class and second class goods railway rates and the minimum rates of motor transport should be greater. No measure of control should apply to owners carrying their own goods and no exemption should apply to agriculturists.

16. The majority have prejudged the case by at once proposing that certain roads should be scheduled as part of the proposed legislation. While the Governor in Council may declare any road to be a scheduled road under the provisions of the legislation, I cannot agree to the inclusion of any specified roads in the Bill. It is necessary to restrict the powers of the Board for refusing to issue a licence. Before doing so, the Board should state their reasons for refusing in writing and call upon the applicant who is being refused to appear before the Board and plead his case, either himself or by means of a properly authorised representative, preferably an advocate. An appeal should lie against the decision of the Board either to the Governor in Council or the Supreme Court of Nairobi and Mombasa. No refusal naturally should be based on the ground that the Railway is an adequate facility for transport between any two given points.

17. I regret the necessity of reiterating that the claims of justice require that there should be an even distribution of the burden to be borne by the Community in Kenya for the maintenance of a State Asset of the nature of the Kenya and Uganda Railway. This makes it imperative that the very first opportunity should be taken to revise the rating policy of the Railway in regard to agricultural exports. While it is not proposed to raise them unduly high, public interest requires that they ought to stand at the level of what I have called in this minute an "economic minimum". All other measures of assisting the Railway as the only common carrier of the Colony come after the revision of the rating policy.

I have the honour to be,  
 Your Excellency's  
 most obedient servant,

SD. U. K. OZA.

## BILLS.

## THIRD READING.

## THE BUTTER LEVY BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move that a Bill to provide for the imposition of a Levy upon Butter be read a third time.

THE HON. T. D. H. BRUCE: I beg to second that.

HIS EXCELLENCY: The question is that a Bill to provide for the imposition of a Levy upon Butter be read a third time and pass.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to—

THE RT. HON. LORD DELAVERE: On a point of order, Sir, does that include the amendments?

THE HON. THE ATTORNEY GENERAL: Yes, Sir, that is the matter.

THE RT. HON. LORD DELAVERE: It was a point of order, I did not understand myself.

THE HON. THE ATTORNEY GENERAL: The adoption of the Report incorporates the amendments in the Bill automatically, Sir.

HIS EXCELLENCY: The question is that a Bill to provide for the imposition of a Levy upon Butter be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

## SECOND READINGS.

## THE CARRIAGE OF GOODS BY MOTOR (CONTROL) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to Provide for the Licensing and Regulation of the Carriage for Reward of Goods by Motor Vehicles over Roads of the Colony be read a second time.

... I beg to move that the second reading of this Bill be commencing at a date subsequent to the adjournment of the Railway Rating Bill which took place yesterday has, I feel, rendered very much easier the task which lies before me—the task, firstly, of explaining the principles which underlie this legislation and the details incorporated in the Bill, and perhaps the more difficult task of justifying to hon. Members of this Council the acceptance and adoption of those principles and details.



refused to entertain any further claims for damage and destruction. That, again, is unhealthy, Sir. They are ill-regulated and spasmodic; they are without a sufficient degree of control; they are run—I am afraid there is sufficient evidence to show—almost as a danger and a curse to those who are properly using the road; but they have a very great convenience indeed, Sir, which the Railway can never give, and that is that they supply transport from the door of the consignor to the door of the consignee. There is no delivery to a station involved; there is no collection from a railway station involved, and so, from that point of view, Sir, they are very attractive indeed. They have proved, in fact, so attractive that I would remind hon. Members of the figure—a figure which was quoted by the hon. Member for Plateau South yesterday—the General Manager estimated a loss between Mombasa and Nairobi of something like £70,000 per annum.

The remedy which the Committee recommended, Sir, was not that, such I have mentioned, of complete and total prohibition; we were not prepared to go that length, Sir, but we have definitely suggested that there is a disease which requires a remedy; that a remedy is urgently needed, and that that remedy should take this form, Sir—that the main trunk avenue of communication from Mombasa to Eldoret on the main line, on the Uganda line, and to Kisumu on the Kisumu line, should be regarded as definitely competing unfairly with the Railway; that between Mombasa and these terminal points there should be certain scheduled points, key points—Voi, Nairobi, Nakuru—and that for the carriage of goods for reward on any section of that road which covers two of these key points application should have to be made to a Board; and that the Board should have power to refuse a licence on certain grounds which I will go into in greater detail presently. Sir, the Bill, as it is framed, is granted by the Board two obligations should it once flow from the granting of that licence. One, Sir, is that the vehicle as licensed should be insured against third-party risks in exactly the same way as under the existing law; a motor omnibus for the conveyance of passengers has to be insured; and, secondly, Sir, that the person intending to operate a service by means of that vehicle should pay a licence fee for the privilege of conveying goods in that vehicle over whatever route he may select.

At this stage, Sir, I feel that I ought to digress to explain what I appreciate, and fully appreciate, is a pair of provisions in this Bill which must have caused a considerable amount of doubt in the minds, both of hon. Members and of the members of the public who have read it. I should like, Sir, to draw attention to those provisions and to explain as shortly as I can how they came about. As I have endeavoured

to indicate, Sir, the scope of this legislation is to control the carriage of goods only where that carriage is definitely in competition with the Railway, and yet, Sir, both at the beginning of clause 4 (1) and at the beginning of clause 5 the wording is such as to indicate to any one who reads those clauses that the function of the Board is to control and regulate all motor carriage for reward over any road in the Colony. The explanation of that, Sir, I think I can give quite shortly and, I hope, satisfactorily. The Report of the Committee embodied in clause 19 a recommendation that in addition to dealing with traffic directly in competition with the Railway the Board should have power to deal with all motor carriage for reward, even on feeder roads and roads ancillary to the Railway, in fact, on any road in the Colony, and that for such traffic there should be payable a fee, with the proviso that where a motor vehicle was kept for the carriage of the owner's own property or own agricultural produce or agricultural requirements no licence fee should be charged.

When the Report and the Bill in that form were considered by Government it was felt that it would be quite sufficient—particularly certain and sufficient in the meantime—to deal with the question of road competition, but that no useful purpose would be served by confusing those two quite separate issues.

THE RT. HON. LORD DELAMERE: Hear, hear.

THE HON. THE ATTORNEY GENERAL: And that it would be better so to amend the Bill as to delete all reference to transport which was not directly in competition with the Railway and to delete, to limit, the functions and duties of the Board to the control and regulation of definitely competing traffic. That, Sir, was very easily done at first sight; it merely meant the deletion of one clause and one schedule, but, Sir, it consequently entailed the ceasing of a considerable amount of the Bill. The situation was urgent. Time was the essence of the contract, and I was anxious to get the Bill published for general information at the earliest possible moment. And so, Sir, you have the production of the wording such as the wording in the two clauses that I have just referred to which is in the light of the later clauses of the Bill incorrect. As the hon. Member for Plateau South has just reminded us, even the long title of the Bill conveys entirely an erroneous impression. That is the reason, Sir. It was because Government was anxious that the public should be informed of its intentions with regard to this problem, as early as possible. It was a choice then between deferring publication and re-casting the Bill or getting the Bill published as it is before us here to-day and later, in the Select Committee to which Your

Excellency has authorised me to say this Bill will be referred, then explaining the apparent inconsistencies of the Bill, and putting the right. I hope hon. Members will accept that explanation and agree that in the circumstances the Government was in it was the better course to pursue.

Now, Sir, I shall come, if I may, quite shortly to the details of the Bill. Its sole object now is to regulate and control traffic which is directly in competition with the Railway. By that I mean Sir, competition which, if we may take Mombasa as the terminal port of departure, means transport which carries goods for reward in motor vehicles from Mombasa to a point beyond Voi. The second stage will be beyond Nairobi, i.e. to or beyond Voi, to or beyond Nairobi, Nakuru, and in turn Eldoret and Kisumu.

THE HON. T. J. O'SHEA: On a point of order, may I ask whether the Bill is what it is called or what the hon. Member says it is? The Bill as it stands is to control traffic over the whole of the roads of the Colony. Am I to understand him to say that he will move amendments to change the purpose of the Bill?

THE HON. THE ATTORNEY GENERAL: I would remind the hon. Member that the title of a Bill is no part of it. That is a cardinal and elementary point of construction. The title is there for the guidance of hon. Members, but it forms no part of the legislation itself. The position is, Sir, that this debate, according to the definition of our Standing Rules and Orders, is confined to the principle—if it incorrectly embodies the principles which this House accepts then, Sir, it is a case for amendment. The contrary proposition which has just been advanced is quite new to me, that we are not tied by the principles which commend themselves to us, but by the actual wording of the draft Bill before the House. I have already mentioned the Bill will go to Select Committee, and what I am anxious to learn is whether the principle commends itself. If it does, Sir, I think the details can be quite easily settled and quite constitutionally.

I repeat, Sir, that we are dealing now with competition along that road which runs very largely parallel to the Railway and which is directly in competition with Railway transport. The scope of the Bill covers all motor vehicles—tractors, trailers, motor cycles, side cars. The definition of "motor vehicle" is made as narrow and restrictive as we have been able. If the principle applies to the conveyance in bulk, then it applies to the conveyance of small quantities in the same way, but it only applies to the carriage for reward. There is nothing in this to prevent any person carrying his own goods with him or the goods belonging to other persons

travelling with him between six points all over the system, but there is one thing in the definition of carriage for reward that I ought to draw attention to specifically: that is that carriage for reward has been defined as including the delivery of goods which have been purchased or the conveyance to the place of sale of goods which have been imported by the seller. That is to say, if a merchant house in Nairobi agrees, instead of using the Railway, to use its own fleet of motor vehicles to bring its own imports up to Nairobi, under the provisions of clause 4, that is considered a conveyance of goods for reward. Application has to be made to the Board, Sir, and the applicant has to state the routes over which he proposes to operate the service; the rates he proposes to charge; the maximum weight of goods he proposes to carry; the kind of goods or merchandise he proposes to carry; and the number of persons, other than the driver, to be carried in the vehicle. On receipt of that application, Sir, the Board fixes a date for hearing and determining that application, and all persons interested are entitled to appear and be heard, including, Sir, the High Commissioner, or any authorised servant of the High Commissioner for Transport. The criteria which the Board apply are these:—The condition of the road and the adequacy of existing facilities for the conveyance of goods between the two terminal points, but there is a proviso to clause 7 that the Board is not entitled to refuse a licence merely because existing Railway facilities between the places to be served are, in the opinion of the Board, adequate. If an application is granted, Sir, there is an obligation on the applicant for the licence fully to insure the vehicle against third-party risks, and here, Sir, I must emphasise this important point: the licence is granted to the individual; the licence is granted to the vehicle. There is no question of a saying, "I desire to run a service between Mombasa and Nairobi and employ a vehicle. If my first vehicle breaks down I shall employ another." The legislation specifically licences the vehicle and in no sense licences the applicant, so that if a vehicle breaks down that licence cannot be transferred to another vehicle. A licence is, of course, annual, Sir. No provision in the legislation is provided for licences for a shorter period than one year. The reason for that can be explained very shortly. Particularly between Mombasa and Nairobi, it is only for a certain part of the year that the road is reasonably open for motor traffic, so that an annual licence, in fact and not in practice will be effective for twelve months. It will probably be effective for seven or eight months with reasonable safety, and if one is prepared to take a risk possibly effective for a little longer. There is a certain time of the year when the rains make the road unsuitable for heavy motor traffic.

Under clause F1 we come to the scheduled points. I have already stated what they are. There is provision for any other point to be a scheduled point. And for fixing a fee under the Schedule for conveyance to any newly declared scheduled point. They are at first sight, I have no doubt, heavy. At an earlier stage, I said that the Committee had definitely and emphatically declined to take any action which would lead quite clearly to a monopoly on the part of the Railway; they would neither be a party to legislation which would close or prohibit traffic entirely, or to any other form of legislation that would close the Railway to a complete monopoly. The most ambitious booky have been worked out in such a direction as to be the case of a thoroughly well run road, and such a margin would leave a profit. They are not prohibitive, though in favour of motor transport, but it will be obligatory by reason of the fact that an applicant will not only have to pay this fee but to pay his insurance premium. Also there will be an obligation upon him to see that his vehicle is suitably fitted, the vehicles suited to the service, and we will in that way get a more well-organized and better standard, though a very much smaller one, than exists at the present moment. When we come to clause 5, Sir, there is one point that I think I need stress. If the first row stands, it will put a vehicle beyond its capacity and quite unsuitable for the task it performs, the only person in practice who suffers is the driver. It is in practice very often extremely difficult to sign home the compliance of the owner, and if the driver is fined and cannot pay the fine, as a consequence of that another driver is obtained and the same thing occurs. So to this legislation we have imported a provision which first appeared in the English Road Act, 1930. It will now be competent to a court, instead of punishing a driver, to suspend or suspend the licence of the vehicle; in effect to put the vehicle for a certain time off the road. That, Sir, has the effect of putting the owner stipulatingly, for instance, that the conditions of his licence regulating, for instance, the tonnage of goods which he is authorized to carry, the number of persons other than the driver that he is authorized to carry, or any other conditions, if he deprives him of the pleasure of carrying a motor vehicle, it is all my driver's fault.

The only point, Sir, of promoting that from the current law, the penalty is placed on the driver, and it is in accordance with the ordinary legal principle that a man's responsibility with the knowledge of his person are matters which he ought to be called upon to prove.

This has to do, Sir, with the fact that under the Traffic Ordinance a motor vehicle licence taken out in Uganda or Tanganyika is effective within the Colony. That position is, of course, not changed, but the effect of the last clause is merely to declare, Sir, that though a vehicle licensed in Uganda is entitled to use the roads of this Colony without payment of any other fee, it is not entitled to carry goods for hire or reward between scheduled points without complying with the provisions of this Ordinance.

These are the principles and the more important details of this draft legislation. I repeat, Sir, it is Your Excellency's intention to refer this matter for the Bill to be introduced unless committed in the course of the next session. I hope, Sir, you will be able to indicate how the Bill, which, in my opinion, the Government should have introduced, should take shape in the Bill to be introduced. The principle of the Bill is to be laid to rest. Members will probably be glad to read it.

THE HON. T. D. H. BUCK, VICE-CHANCELLOR OF UGANDA.

HIS EXCELLENCY: The question before the Council is to read the Bill.

Council adjourned for the afternoon.

THE CHIEF JUSTICE: I am very glad that the Bill has been taken out of the Bill book for the purpose of making an amendment in this Bill, which will enable us to deal with the question of certain scheduled points, so that it will not conflict with the general principle of the feeding of the traffic in any other way. I am glad, Sir, it is possible to intelligently understand by everybody in this country what a tremendous thing this competition with the railway is, quite an untried basis, between motor and National. The Railway, as I have said, considers that it loses something like £100,000 a year, that is in gross revenue. I understand, Sir, I think, Sir, I work it out, every day is an rather a busy day, this assurance we have not had in the afternoon lately because there has been a pressure of business—it is difficult to get those things done as far as they come out, on classes, but I am glad in the Railway is something like 50 per cent of the total car and rate, it is a very low proportion of the total, and Sir, that is done in one or two classes, that is, on the first and second class staff carried by the Railway. That is done on those classes because they are believed to be able to carry it, because they are rather

GOVERNMENT NOTICE No. 352.

HIS Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council:—

G. B. STOOKE,

Clerk to the Legislative Council.

**A Bill to Provide for the Licensing and Regulation of the Carriage for Reward of Goods by Motor Vehicles over the Roads of the Colony.**

BE IT 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 <sup>the Carriage of Goods by Motor Vehicle (Control) Ordinance, 1981</sup> and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.

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

"motor vehicle" means every description of vehicle propelled by means of mechanism contained within itself other than a vehicle used on specially prepared ways such as railways and tramways, and includes a tractor and a trailer;

"tractor" means a motor vehicle designed for towing or pulling trailers;

"trailer" means a vehicle attached to and drawn by a motor vehicle and the weight is partly supported by the motor vehicle or other thing.

3. There shall be established a Road Transport Control Board, hereinafter referred to as "the Board," which shall consist of not fewer than three, or more than five, members, as the Governor may from time to time nominate, provided that neither the General Manager, Kenya and Uganda Railways and Harbours, nor the Director of Public Works, shall be eligible for nomination to the Board.

4. From and after the commencement of this Ordinance, any person who conveys any goods by means of a motor vehicle other than the personal effects of persons travelling therein over any road in the Colony otherwise than in accordance with the provisions of a licence granted to him by the Board shall be guilty of an offence.

(2) If any goods which have been sold or are being conveyed for sale, are conveyed by the seller by means of a motor vehicle owned by him, or by means of delivery of those goods to their purchaser or to the place of sale such conveyance shall constitute a conveyance for reward within the meaning of this section.

(3) Any person who, during the currency of a licence issued by the Board, contravenes any condition of such licence or fails to comply with any requirement thereof or who carries or permits to be carried in any motor vehicle licensed under this Ordinance any quantity of goods in excess of the licensed carrying capacity of such vehicle, or, except in cases of sickness, accident or emergency carries or permits to be carried in such vehicle more persons than the licence of such vehicle permits, or any person other than a servant of the licensee, shall be guilty of an offence.

5. Any person who desires to use a motor vehicle for the transport of goods for reward shall make application to the Board in such form as the Board may prescribe. Every such application shall state—

- (a) the places between which it is proposed to carry goods;
- (b) the rates which it is proposed to charge;
- (c) the maximum weight of goods which he proposes to carry in the motor vehicle;
- (d) the kinds of goods or merchandise which it is proposed to carry;
- (e) the number of persons other than the driver, to be carried in the vehicle.

No licence shall be granted under this Ordinance unless the Board is satisfied that the granting of the application will be to the public advantage, and that—

- (a) the condition of the road or roads included in any proposed route is such that the running thereof of the vehicle in respect of which the application is made will not cause unreasonable damage to such road or roads;

Application  
for licence.

Matters to be  
considered by  
Board on  
application  
for licence.

(c) existing facilities are inadequate for the conveyance of goods or merchandise of the kind which it is proposed to carry between the places proposed to be served.

7. The Board may grant a licence in accordance with the application, or subject to such variations and conditions as the Board may think fit, or may refuse the application. Provided that the Board may not refuse an application merely because existing railway facilities between the places proposed to be served are in the opinion of the Board adequate.

8. The Board shall publish in the Gazette notice of publication in every application for a licence under this Ordinance and shall at the same time appoint a time and place at which such application will be considered, and the applicant and all persons claiming to be interested in such application, including any authorized servant of the High Commissioner for Transport, shall be entitled to be present at such time and place and to be heard.

9. (1) Notwithstanding the provisions of section 7, no application for a licence under section 13 of this Ordinance shall be granted unless the applicant satisfies the Board that he has effected, with an insurance company approved by the Board, a policy of insurance covering in such terms as may be prescribed all such claims as may be made against him as owner, or as driver or employer of the driver, of the vehicle in respect of damage to person or property, other than the goods to be carried for reward in the vehicle.

(2) Any stipulation purporting to restrict the liability of the person insured in respect of any such claim as aforesaid shall be void.

(3) If any person for the purpose of obtaining a policy of insurance required by this section makes any false statement in consequence whereof the policy is likely to be avoided, or if the person insured commits any act which disentitles him to claim under the policy, he shall be guilty of an offence under this Ordinance.

(4) If a policy of insurance required by this section lapses or otherwise becomes invalid, any licence issued under this Ordinance in respect of the vehicle to which the policy relates shall thereupon become void.

Power of  
Board to grant  
licence.

Notice of  
publication of  
application  
for licence.

Application  
for licence.

Insurance  
policy.

Duration of licence.

10. Every licence shall be dated as on the day on which it is issued and shall be subject to the provisions of subsection (4) of section 3 of this Ordinance, remain in force until the thirty-first day of December of the year in which it is issued.

Scheduled points.

11. Mombasa, Voi, Nairobi, Nakuru, Eldoret and Kiambu are hereby declared to be scheduled points. Provided that a journey between Eldoret and Kiambu shall not be deemed for the purposes of this Ordinance to be a journey between scheduled points. The Governor, on the advice of the Board, may from time to time by notice in the Gazette declare any other place to be a scheduled point.

Fee for licence between scheduled points.

12. (1) There shall be payable for a licence to carry goods for reward in a motor vehicle from any scheduled point to or to a place beyond any other scheduled point the fee set out in the Schedule to this Ordinance.

(2) In respect of any place which the Governor may declare to be a scheduled point under section 11 of this Ordinance the Governor in Council may by rule prescribe the fee to be paid in respect of the carriage of goods for reward in a motor vehicle to or from such scheduled point to or from any other scheduled point.

Penalties.

13. Any person who is guilty of an offence against any of the provisions of this Ordinance shall be liable on conviction by a magistrate of the first or second class to a fine of one hundred pounds or to imprisonment for six months or to both such fine and such imprisonment, and the court may in addition to or in lieu of any other punishment cancel, or suspend for such period as it may think just, any licence granted under this Ordinance, and in such event it shall be an offence under this Ordinance to carry goods for reward in the vehicle so licensed during the period for which the licence of such vehicle is cancelled or suspended.

Offences cognizable to police.

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

Onus of proof.

15. When any person is charged with carrying goods for reward without being duly licensed in that behalf under this Ordinance the onus of proving that the goods so conveyed were not conveyed for reward shall be on the person so charged.

16. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

17. Notwithstanding the proviso to section 3 of the Application of Traffic Ordinance, 1920, and motor vehicles licensed in the Uganda Protectorate or in the East Africa Territory shall be entitled to carry goods for reward within the Colony unless it is duly licensed under this Ordinance.

## SCHEDULE

Between	For each vehicle licensed to carry		
	Up to and not exceeding 30 cwt.	Exceeding 30 cwt. and not exceeding 2 tons	Exceeding 2 tons and not exceeding 3 tons
Mombasa and Voi	45	60	90
Voi and Nairobi	45	60	90
Nairobi and Nakuru	45	60	90
Nakuru and Eldoret	45	60	90
Nakuru and Kiambu	45	60	90
Mombasa and Nairobi	90	120	180
Voi and Nakuru	90	120	180
Nairobi and Eldoret	90	120	180
Nairobi and Kiambu	90	120	180
Mombasa and Nakuru	135	180	270
Voi and Eldoret	135	180	270
Voi and Kiambu	135	180	270
Mombasa and Eldoret	180	240	360
Mombasa and Kiambu	180	240	360

For each vehicle licensed to carry more than three tons the fee applicable to a vehicle licensed to carry three tons plus 50 per cent of such fee for every ton or part of a ton by which the weight which such vehicle is licensed to carry exceeds three tons.



THE SECRETARIAT  
NAIROBI.  
KENYA.

6<sup>52</sup>

WHEN REPLYING  
PLEASE QUOTE  
No. of Log. Co. 55/54  
AND DATE

RECEIVED  
6 JUL 1931  
COL. OFFICE

11th June, 1931.

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies, and has the honour to transmit twelve copies of the undermentioned documents for information :-

Report of Committee to consider the Motor Services Bill.

SEPARATE

- 17244/31 --- Report of Select Committee on the Town Planning and Development Bill.
- 17250/31 --- Report of Standing Timber Committee.
- 17251/31 --- Registrar General's Annual Report, 1930.
- 81269/31 --- Report of His Majesty's Western African Dependencies Section on the International Colonial and Maritime Exhibition at Antwerp, May to November, 1930.
- 22002/31 --- Memorandum on Mailand - South Africa Civil Air Transport Service.
- 16300/31 --- Estimate of 1931 Budget Prospects as at 31st May, 1931.
- 17253/31 --- Statement under the Electric Power Ordinance for the year under 31st December, 1930.
- 17254/31 --- Rules of Court for Legal Practitioners (No. 1, Judicial Department Annex to Rules, 1930).
- 17255/31 --- Report of Committee on Native Land Tenure in the Kaimosi Game Reserve.
- 16246/31 --- Return of Land Grants, etc., 1st October to 31st December, 1930.
- 10440/10/31 --- Medical Department Annual Report, 1930.
- 17255/31 --- Statement with regard to Contagion of the Diseases of Animals Ordinance.
- 17256/31 --- Report on work undertaken at the Plant breeding Stations, Njoro, 1930.
- 26113/31 --- Report of Proceedings of the Agricultural Research Conference held at the Miani Research Station, February, 1931.

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COLONY AND PROTECTORATE OF KENYA

REPORT OF A COMMITTEE TO CONSIDER  
THE MOTOR SERVICES BILL

PRINTED BY THE GOVERNMENT PRINTER  
1931

# Report of a Committee to Consider the Motor Services Bill

YOUR EXCELLENCY,

We were appointed members of a Committee to consider the Motor Services Bill and the principles underlying it, and to report what action, if any, is necessary or desirable to control competition between rail and motor services, whether by legislative or other measures.

2. We have held sessions at Mombasa and at Nairobi, and have taken evidence from fifteen witnesses, and received and considered memoranda from a number of public bodies and individuals in the Colony.

3. The position which exists to-day may be stated very shortly. Owing to the opening of a road between Mombasa and Nairobi, which for the greater part of the year is serviceable for motor traffic, and owing to the fact that the accepted railway rating policy necessitates the charging of a high rate on commodities which are included in Classes 1 and 2 in the Railway Tariff, most of which articles, e.g. blankets, cloth, tobacco, cigars and cigarettes, confectionery, wines and spirits, are of small bulk and easy to transport, there has arisen in recent years a steadily growing motor transport industry, chiefly centred in Mombasa, which is enabled, by carrying only goods in these two classes, materially to undercut the railway charges and still show a substantial profit.

4. The rate charged by the Railway for conveyance from Mombasa to Nairobi of Class 1 goods is Sh. 18/24 per 100 lb.; for Class 2 goods it is Sh. 13/40. Goods in these classes are carried at railway risk, and the average transit time is stated by the Railway Administration to be 36 hours. By motor transport these goods are carried at a rate of from Sh. 13 to Sh. 14 per 100 lb., some of the carriers effect insurance on the goods they carry, and though the transit time is at best over 48 hours, this represents the time of transit from consignor's store to the premises of the consignee, and therefore probably compares not unfavourably with the transit time by rail.

5. We are informed that the motor rates are fixed at a figure which shows a profit even if the vehicles used have to return from Nairobi to Mombasa empty, but in practice return freights for the whole or part of the journey are obtained, for it is the admitted policy of motor owners to carry, on the return trip to Mombasa, any goods that are offered, the charge in every case being fixed at a figure slightly below the railway charges for the particular class of goods carried.

6. In introducing the Railway Estimates for 1931, the General Manager, Kenya and Uganda Railway and Harbours, stated that motor competition had assumed such proportions that he calculated that the loss thereby occasioned to railway revenue amounted to £50,000 a year in respect of goods carried from Mombasa to Nairobi. The General Manager has since informed us that that figure is an under-estimate. We had evidence in Mombasa of seventy-nine motor lorries regularly engaged in this traffic, and the General Manager has informed us that a count has shown as much as 350 tons of goods going by motor lorry from Mombasa to Nairobi in a month.

7. Another smaller but by no means negligible factor is that the railway rates on motor vehicles are high, approximately £15 to Nairobi, £24 to Eldoret, and £30 to Kampala. It is therefore becoming increasingly common for purchasers of motor vehicles to buy in Mombasa, and to drive the vehicle to its destination by road, usually taking any freight that offers at rates which undercut the Railway.

8. The Draft Motor Services Bill proposes to deal with the situation which we have briefly indicated in the foregoing paragraph of this report by empowering the Central Roads and Traffic Board to examine every application for a licence to carry either passengers or goods for hire or reward on any road scheduled by the Board and to grant a licence if satisfied—

- (a) that the grant of a licence will be to the public advantage;
- (b) that the grant of the licence will not result in unreasonable damage to roads; and
- (c) that between the points to be served by the applicant existing facilities for the conveyance of passengers or goods (as the case may be) are inadequate.

If not satisfied on all these points, the Board may refuse a licence.

9. The General Manager has told us that in his opinion these provisions will be of little benefit to the Railway unless the Board are prepared to limit in every case the existing railway facilities for the carriage of goods between, say Mombasa and Nairobi, are adequate, and to refuse any licence or, in other words, to prohibit on the Mombasa-Nairobi Road the motor carriage of goods for hire or reward.

10. We would observe firstly that we disapprove of giving the Board powers to a Board of which the General Manager is a member, a staff which the General Manager nominates and which the Board should not have complete power to prohibit motor traffic for hire or reward on any road in the Colony except on the score of unreasonable damage to road surface or a power similar to powers given by the Road Inspection Ordinance, 1924.

11. The effect of prohibiting the carriage of goods by motor between Mombasa and Nairobi would be to give the Railway Administration practically a monopoly of the carriage of goods (or, by reason of their taper rates and their distribution rates from Nairobi, Eldoret and Kisumu, the Administration can compete on more equal terms with motor competition from any point other than Mombasa). We are aware of opinion that there is no justification for giving any such monopoly, but that, on the contrary, the healthy competition is essential for the Railway as regards these routes generally.

12. The present competition, however, is definitely unfair and the situation that exists to-day calls for urgent remedial measures.

13. The Colony depends and will, so far as can be foreseen, continue to depend for its produce and prosperity entirely on agriculture. In the Kenya and Uganda Railway the Colony has a State asset, built up at a cost of many millions, which must in the Colony's best interests be safeguarded so far as the movement of its bulk agricultural products on which the Colony depends is concerned, no other system of transport can within any reasonable period of time replace the Railway. It is solely because of the accepted rate policy of the Railway Administration, a policy which encourages local development by charging rates based on the capacity to buy, and not on the actual cost of haulage, that motor transport is enabled to compete with the Railway as it does in the carriage of imports, and that competition has now reached a stage at which it definitely constitutes a menace to the financial stability of the Railway and, by implication, to the possibility of operating the profitable rate policy.

14. Furthermore, the evidence at our disposal tends to show that, except in a few isolated instances in Eldoret and in Kampala, the public generally derives benefit from this alternative and cheaper form of transport, for goods conveyed by motor are almost invariably retailed at the same rates as goods conveyed by rail.

15. If the present unrestricted and uncontrolled competition is allowed to continue, the Railway, in order to meet it, will be forced to reduce its

charges on high-rated commodities. Such a reduction will entail a corresponding increase in its charges for the conveyance of low-rated traffic, thus reducing agricultural profits or possibly preventing the production of bulk products for export.

16. Clearly, railway rates, of which the agricultural prosperity of the Colony so largely depends, can only be maintained if the Railway is protected against wasteful and uneconomic competition. If such a measure of protection is given to the Railway, the consuming public will not suffer to any appreciable extent, and the necessity of safeguarding an essential State asset we submit there can be no question whatsoever.

17. We recommend—

(i) that a statutory board be established, consisting of not less than three and more than five members, and that neither the General Manager, Kenya and Uganda Railways and Harbours, nor the Director of Public Works should have a seat on the Board;

(ii) that Mombasa, Voi, Nairobi, Nakuru, Eldoret and Kisumu be declared to be scheduled points, and that neither the General Manager of the Board, nor any other places to be scheduled points;

(iii) that all applications to convey goods for hire or reward from a scheduled point to any other scheduled point be considered by the Board, which may grant or refuse a licence after giving due weight to the considerations set forth in clause 2 of the Draft Motor Services Bill, but that the Board may not refuse a licence merely because existing rail ways facilities between the proposed transport points are, in their opinion, adequate;

(iv) that there be no tax attached to convey goods between scheduled points the following rates—

	For every lorry licensed to carry up to 2 tons	For every lorry licensed to carry more than 2 tons
Between Mombasa and Voi and Nairobi	85	77
Nairobi and Nakuru	85	77
Nakuru and Eldoret	85	77
Nakuru and Kisumu	85	77
Mombasa and Nairobi	120	180
Voi and Nakuru	120	180
Nairobi and Kisumu	120	180
Nairobi and Nakuru	125	180
Eldoret and Kisumu	125	180
Mombasa and Kisumu	180	240
Mombasa and Eldoret	180	240

Over 3 tons: half the rate for each ton in excess of 3 tons.

18. Licences should be issued, not in respect of the nominal load capacity of the lorry but in respect of the actual maximum weight authorised to be carried, so that, for instance, it will be an offence for a lorry licensed to carry two tons to carry more than that amount.

For such an offence a court should have power not only to punish those responsible, but also to suspend the licence of the vehicles for a stated period.

We recommend further that the conveyance by motor of goods for hire or reward should be controlled generally throughout the Colony, but all such transport be done under a special licence from the Board, and that the following licence fees be payable:-

- (a) For a licence to carry the owner's own property or own agricultural produce 1/6
- (b) For a licence to carry for hire or reward agricultural produce and agricultural requirements 4/-
- (c) For a licence to carry goods for hire or reward 1/10

20. Section 30 of the Traffic Ordinance, 1923, prescribes in respect of a vehicle licence for the conveyance of passengers that every application for such licence must effect third-party insurance. There should, in our opinion, be a similar obligation on every applicant for a licence to carry goods between subulated points.

21. Your Committee has not dealt specifically with the question of motor traffic beyond providing such traffic on vehicles licensed for goods traffic. As the Ordinance, 1923, in our opinion, contains all the necessary provision for regulating passenger traffic, and to bring the requisite degree of safety, but we suggest that some steps should be taken in the direction of the more stringent application of the provisions of that Ordinance regarding the inspection and the insurance of such vehicles.

22. We append hereto a copy of a draft Bill embodying our recommendations.

We have the honour to be,

Your Excellency's most obedient servants,

- A. D. M. GREGG
- H. J. MARSH
- CONWAY HARVEY
- D. J. O'BRIEN
- A. O. FANNING
- GEORGE BURNS

Nairobi,

30th May 1931

DISSENTING MINUTE BY MR. J. K. OZA ON THE REPORT OF THE COMMITTEE ON THE MOTOR SERVICES BILL

Your Excellency,

I very much regret the necessity of writing this dissenting minute.

The Committee of which I have the honour to be a member was appointed to consider the principles involved in the Motor Services Bill, and also the provisions of the Bill.

I am unable to state that the principle of the Bill is sound or just. In my opinion it is bad and unwise, inasmuch as it seeks to check the growth and development of private enterprise, and attempts to bring two very unequal traffic conditions of this Colony - the Railway and the Motor - into line.

It has been stated during 1930 that the Kenya and Uganda Railways suffered a loss of about 250,000 on account of motor competition between Mombasa and Nairobi. The General Manager of the Railways stated that this was an under-estimate.

It has also been stated that it is solely because of the accepted rating policy of the Railway Administration in policy which encourages local development by charging rates based on the capacity to pay and not on the actual cost of hauling, that motor transport is enabled to compete with the Railway and that competition has now reached a stage where it seriously constitutes a menace to the financial stability of the Railway, and by implication to the possibility of continuing the present rating policy.

Both these statements are incomplete. The total loss of the Railway Administration during the year 1929-30 was 240,000. Granted that the figure of 250,000 was an under-estimate by about 210,000, the total contribution of motor transport to the Railway loss is only one-seventh of that loss. The motor transport workers of the Colony furnished approximate figures indicating what loss their competition could probably cause to the Railway. According to them, that loss, between Mombasa and Nairobi, could have exceeded 400,000. The fact that the total loss of the Railway Administration is by far much larger necessarily implies that motor competition plays a very small part in causing it.

It seems to me to be the right that the first attack and the sole attack should be concentrated on motor transport workers. The loss to the Railway can only be made good in a very indirect and remote way which requires careful study. It is not wise to attempt to check each component factor causing this loss, it is responsible for it, and it should be determined. The loss should then be distributed amongst the various component factors in proportion to the degree to which each occasions loss.

In proceeding along this line, it cannot be denied that the rating policy of the Railway Administration is also responsible to a much greater degree for the total loss of the year. It is admitted that the rates are based on the capacity of the former to pay and not on the actual cost of hauling. I wish to grant that the Colony is entirely dependent on agricultural produce for further development, but I cannot agree that agriculture should be subsidised in the way it is being done in this Colony. The commercial, the transporting and the consuming sections of the community are its mainstay as the producing section and there is a limit up to which the producing section can be assisted by imposing a degree of sacrifice on the other sections of the public. That limit has long ago been reached in this Colony.

The Railway rating policy is part of this unsound and uneconomic policy. Its effect upon the financial position of the Railway has been disastrous. In order to avert this disaster, an attempt is being made to make the











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53 K 5 NOMBASA 15 101

VIA KEYED RADIO  
 RECEIVED  
 16 JUN 1931  
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1961 JUN 2 9 34 AM

ECO LORD PASSFIELD LONDON  
 GOVERNMENT PRESENTLY CONTEMPLATING LEGISLATION STOP MOTOR  
 TRANSPORT BY IMPOSITION PROHIBITIVE LICENCE FEES STOP REASON  
 STATED UNFAIR COMPETITION WITH RAILWAY WHICH OBLIGED MAINTAIN  
 HIGH TARIFF IMPORTED GOODS IN ORDER CARRY SETTLERS PRODUCE  
 UNDER COST STOP IF MOTOR COMPETITION CONTINUES RAILWAY MUST  
 REDUCE TARIFF IMPORTEDS AND RAISE TARIFF PRODUCE WHICH  
 DETRIMENTAL WHITE FARMER INTERESTS STOP TRANSPORT DIVERTED



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By

52 K 9 MOMBASA VIA KENYA RADIO 15 1010

W142809/45 10/30 W. H. & Est. 1911

BY MOTORS CONSTITUTES MINUTEST FRACTION TOTAL RAILWAY LOSSES  
 WHICH DUE UNECONOMIC WORKING TOP BOTTOM AND UNWORKED BRANCH  
 LINES MANY INDIANS INVESTED CAPITAL MOTOR TRANSPORT PROVIDING  
 EMPLOYMENT HUNDREDS INDIANS NATIVES STOP BENEFIT SECURED TRADERS  
 UP COUNTRY STATIONS CHEAPER MOTOR TRANSPORTED GOODS ENABLES CONSUMERS  
 MOSTLY NATIVES OBTAIN NECESSARIES LIFE CHEAPER STOP PROPOSED

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SMAN

53 K 9 HOMBASA 15 1010 VIA KOTA RADIO

ORDINANCE INEQUITABLE UNJUST ATTEMPT RUIN INDIAN NATIVE INTERESTS  
TO PLACATE WHITE FARMERS STOP FROM INTERVENE SHEKH PRESIDENT  
INDIAN ASSOCIATION

Vertical text on the left margin, possibly a date or reference number.