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DATE. ⇨ 13/3/72

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(c) by forwarding it by post in a prepaid registered letter addressed to the person at his usual or last known place of abode.

Presumption where notice is served by post.

46. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Limitation of actions.

47. (1) No action the cause of which shall have arisen after the commencement of this Ordinance shall be brought against the High Commissioner unless the same be commenced within twelve months after the cause of action arose.

(2) No action shall be commenced against the High Commissioner until one month at least after written notice or intention to commence the action has been served upon the High Commissioner by the plaintiff or by his attorney or agent. In that notice the cause of action and details of the claim shall be clearly and explicitly stated.

(3) In any action against the High Commissioner, no execution or attachment or process in the nature thereof shall be issued against the High Commissioner or against any property of His Majesty, but the General Manager shall pay out of the Railway and Harbour Fund such sums of money as shall by the judgment of the Court be awarded to the plaintiff.

Representation of the High Commissioner in Court.

48. (1) The High Commissioner may authorize the General Manager to act for or represent him, or to appoint any other person to act for or represent him, in any proceeding before any civil, criminal or other court.

(2) The General Manager, or any other person appointed by him to conduct prosecutions shall be entitled to conduct such prosecutions without the permission of the magistrate.

PART V.

REGULATIONS AND REPRAL.

Regulations.

49. The High Commissioner may, in addition to the powers conferred upon him by the Order in Council, make,

vary or revoke regulations, not inconsistent with this Ordinance, with respect to any of the following matters, that is to say, with respect to:—

- (1) The proper control and management of any anchorage, tidal river, foreshore, dock, basin or harbour, and the entrance thereto, the removal of any obstruction therein, and the preservation from injury of any works, buoys, dredgers, ships or other property connected therewith;
- (2) The erection of buildings or other structures, or the planting of posts or poles that may interfere with the proper working of any harbour or the signals or beacons thereof;
- (3) The regulation of the stevedoring, landing, shipping, transshipping, delivery, collection and warehousing of goods at any harbour, the fixing of minimum hours of work in ships loading or discharging cargo, and the minimum tonnage to be loaded or discharged in a working day, and the declaration of the tonnage and valuation of goods imported or exported and the necessary declarations and statements in support thereof;
- (4) The proper control of all ships entering or within any harbour, or coming alongside any jetties, piers, quays, or wharves, or anchoring or mooring within the limits of any harbour, and, subject to the provisions of any law relating to merchant shipping, the taking of measures for the prevention of ships from leaving any harbour if overloaded or improperly loaded or insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety, or if so improperly found or otherwise unseaworthy;
- (5) The fixing and determining of ships dues, wharfage charges, and light dues and other harbour dues and charges, and the payment and the exemptions from payment thereof;
- (6) The prevention of shipwrecks and casualties to ships, and the protection of ships and cargoes wrecked or in danger of being wrecked, and the removal, destruction or abandonment of wrecks and wreckage.

and anchors, dangerous or likely to become dangerous or a nuisance, or that obstruct or are likely to obstruct the fairway of any harbour, and the levy and recovery of a rent for the right of a hulk or wreck or any wreckage to lie in any harbour, and the saving of life in case of shipwreck;

- (7) The removal or sale of stranded ships and their cargoes and appurtenances; the payment of fines, expenses of sale and other charges incurred in connection therewith, and the disposal of the proceeds of sale;
- (8) The promotion of efficiency and discipline in the pilot service, and the service upon ships or works connected with any harbour or lighthouse, lifeboat or life-saving apparatus, and provision for the examination, registration and licensing of pilots, and the charges to be made by pilots, their duties and obligations;
- (9) Subject to the provisions of any law relating to merchant shipping, the examination and certification of masters, mates and engineers of ships engaged in local trade, whalers, tugs, dredgers, fishing boats and light craft, and the charges and licences payable in respect thereof, and, subject as aforesaid, the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft, and the number of passengers to be carried on the same, and the charges to be paid for the registration, licensing and inspection of the same;
- (10) The granting of licences to ferrymen, boatmen, and porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcels agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the regulation of charges leviable by them, and their duties and the hours of their attendance at work;
- (11) The regulation of the use of all landing places, slips, gridirons, docks, shears, cranes, lights, warps and coaling or other appliances, and the regulation of the traffic within any harbour area;

- (12) The licensing or other authorisation of admission on to the wharves, docks, jetties, or other works of any harbour at any special times of any hotel representatives, landing agents, or other persons soliciting patronage from passengers on ships arriving at or departing from any such harbour;
- (13) The prohibition of smoking in or on wharves, jetties, quays, buildings, or rolling stock;
- (14) The prevention of obstructions and the preservation of good order on the foreshore, and on banks of rivers, wharves, jetties, landing places, breakwaters, and other works within his jurisdiction;
- (15) The duties and conduct of carmen, draymen, carriers, and persons other than servants of the High Commissioner who ply for hire to or from any wharf, building, or other place which is under the control of the High Commissioner;
- (16) The admission of the public to, or their exclusion from, any of the harbours, docks, wharves, jetties and landing places, and the charges (if any) to be made for admission, and the closing to the public, for such period as the High Commissioner may think fit, of any harbours, docks, wharves, jetties, sheds, roads, or landing places under his jurisdiction;
- (17) The prevention of damage or injury to any harbour, dock, slip, wharf, jetty, landing place or other works and premises, ships or any property whatever;
- (18) The prevention of the commission of any nuisance in or upon any harbour, foreshore, dock, wharf, jetty or landing place, and generally the promotion and ensuring of good sanitation, cleanliness and decency within any harbour;
- (19) The charges to be made for warehousing goods under his control and for their care or custody, and the terms and conditions upon which they shall be received, and provision for the disposal of unclaimed goods;
- (20) The definition for the purposes of this Ordinance of dangerous or offensive goods and the conditions under which and the times when those classes of goods

and anchors, dangerous or likely to become dangerous or a nuisance, or that obstruct or are likely to obstruct the fairway of any harbour, and the levy and recovery of a rent for the right of a hulk or wreck or any wreckage to lie in any harbour, and the saving of life in case of shipwreck;

- (7) The removal or sale of stranded ships and their cargoes and appurtenances; the payment of fines, expenses of sale and other charges incurred in connection therewith, and the disposal of the proceeds of sale;
- (8) The promotion of efficiency and discipline in the pilot service, and the service upon ships or works connected with any harbour or lighthouse, lifeboat or life-saving apparatus, and provision for the examination, registration and licensing of pilots, and the charges to be made by pilots, their duties and obligations;
- (9) Subject to the provisions of any law relating to merchant shipping, the examination and certification of masters, mates and engineers of ships engaged in local trade, whalers, tugs, dredgers, fishing boats and light craft, and the charges and licences payable in respect thereof, and, subject as aforesaid, the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft, and the number of passengers to be carried on the same, and the charges to be paid for the registration, licensing and inspection of the same;
- (10) The granting of licences to ferrymen, boatmen, and porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcels agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the regulation of charges leviable by them, and their duties and the hours of their attendance at work;
- (11) The regulation of the use of all landing places, slips, gridirons, docks, shears, cranes, lights, warps and coaling or other appliances, and the regulation of the traffic within any harbour area;

- (12) The licensing or other authorisation of admission on to the wharves, docks, jetties, or other works of any harbour at any special times of any hotel representatives, landing agents, or other persons soliciting patronage from passengers on ships arriving at or departing from any such harbour;
- (13) The prohibition of smoking in or on wharves, jetties, quays, buildings, or rolling stock;
- (14) The prevention of obstructions and the preservation of good order on the foreshore, and on banks of rivers, wharves, jetties, landing places, breakwaters, and other works within his jurisdiction;
- (15) The duties and conduct of carmen, draymen, carriers, and persons other than servants of the High Commissioner who ply for hire to or from any wharf, building, or other place which is under the control of the High Commissioner;
- (16) The admission of the public to, or their exclusion from, any of the harbours, docks, wharves, jetties and landing places, and the charges (if any) to be made for admission, and the closing to the public, for such period as the High Commissioner may think fit, of any harbours, docks, wharves, jetties, sheds, roads, or landing places under his jurisdiction;
- (17) The prevention of damage or injury to any harbour, dock, slip, wharf, jetty, landing place or other works and premises, ships or any property whatever;
- (18) The prevention of the commission of any nuisance in or upon any harbour, foreshore, dock, wharf, jetty or landing place, and generally the promotion and ensuring of good sanitation, cleanliness and decency within any harbour;
- (19) The charges to be made for warehousing goods under his control and for their care or custody, and the terms and conditions upon which they shall be received, and provision for the disposal of unclaimed goods;
- (20) The definition for the purposes of this Ordinance of dangerous or offensive goods and the conditions under which and the times when those classes of goods

shall be landed, shipped, or transhipped, and the prohibition of the landing, shipping or transhipping of those classes of goods, and provision for or sanctioning of the removal or destruction of the same ;

- (21) The use of harbour land for coal stands, depositing or forwarding sites, pipe lines, power lines and the like, and whether the same shall be overhead, underground, or submarine ;
- (22) Advertising and bookstalls at any harbour and the fixing of the hours and days during which any such bookstall may remain open for the use of the public ;
- (23) The sale of liquors and refreshments within a harbour, and the imposition of licensing fees in respect of the sale of such liquors and refreshments ;

and generally with respect to the use and working of harbours and for the good government thereof, and the maintenance of order thereon and therein.

The regulations may provide penalties for any contravention thereof or failure to comply therewith, and may also impose different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty shall exceed a fine of fifty pounds or imprisonment for a period of six months, or both such fine and imprisonment.

As often as the contravention of or failure to comply with any such regulation causes damage to any property under the management or control of the High Commissioner, the person causing the damage shall, in addition to any penalty which may be imposed under the regulation, be liable to the High Commissioner for the amount of the damage done.

A copy of all regulations for the time being in force shall be published in the Gazette and kept at the Port Office at each harbour and any person shall be allowed to inspect the same free of charge.

The Port Captain or other authorised officer shall on demand cause to be delivered to the master of any ship arriving at any harbour a copy of this Ordinance and of such harbour and quarantine regulations as may be in force in the harbour.

Repeal.

50. (1) The Port Ordinance (Chapter 107 of the Revised Edition) is hereby repealed.

Provided that all rules, regulations, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under the said Ordinance or under any other Ordinance or Order in Council relating to harbours shall, so far as they are consistent with this Ordinance, be deemed to have been respectively made, given, approved, conferred, and published under this Ordinance.

(2) All reference in any enactment or document to the Ordinance hereby repealed shall, as far as may be, be construed as references to this Ordinance.

Passed in the Legislative Council this twenty-first day of December in the year of Our Lord one thousand nine hundred and twenty-eight.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

G. R. SANDFORD,
Clerk of the Legislative Council.

51
10



KENYA.

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 345

RECEIVED 6 JUNE, 1929.
-1 JUL 1929
COL. OFFICE

Sir,


Wat.

I have the honour to refer to my despatch No. 61 of the 29th January transmitting authenticated copies of Ordinance No. XXXIII of 1928 entitled "the Harbours Regulation Ordinance, 1928" and shall be glad to learn whether His Majesty has yet been pleased to signify his pleasure in regard to this enactment of this measure.

I have the honour to be,

Sir,

Your most obedient, humble servant,


ACTING GOVERNOR.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L. C. M. S. AMERY, F. C., M. P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S. W.

6.52

Any further communication on this subject should be addressed to—
The Assistant Secretary,
Mercantile Marine Department
(address as opposite)

and the following number coded—
M.7632/29.



MERCANTILE MARINE DEPARTMENT,
BOARD OF TRADE,
20 GREAT SMITH STREET,
WESTMINSTER, S.W.1.

RECEIVED
13 MAY 1929
COL. OFFICE

13th May, 1929.

Handwritten initials

Sir,

With reference to your letter of the 12th April (No.15616/29), transmitting a copy of the Harbours Regulation Ordinance, 1928, in respect of Kenya Colony, I am directed by the Board of Trade to state, for the information of Mr. Secretary Amery, that they are advised that, in the interests of shipowners, it is desirable that Section 8 (Compulsory pilotage harbours) should be amended to provide for the limitation, instead of the abolition of pilots' liability. The Board would suggest that the liability of a pilot under this Section should be limited to the sum of £100, plus the amount of the pilotage dues for the voyage concerned following the provisions already in force at Gibraltar and Bermuda.

*Forward on 16/02/30 5 FEB 1930
Copy Sir 398- 30 MAY 1930
copy to a & v - 25 JUN 1929*

The Under Secretary
of State,
Colonial Office,
S.W.1.

/I

I am at the same time to state that the Board will be glad to be favoured with an opportunity of perusing any regulations which may from time to time be made under the provisions of Section 49 (5), (7) and (8) of the Ordinance.

I have the honour to be,

Sir,

Your obedient Servant,

J. E. Baker

I am at the same time to state that the Board will be glad to be favoured with an opportunity of perusing any regulations which may from time to time be made under the provisions of Section 49 (5), (7) and (8) of the Ordinance.

I have the honour to be,

Sir,

Your obedient Servant,

J. E. Baker

Telegraphic Address:
"TRANSPORT, PEARL LONDON."
Telephone No. 1 VICTORIA 8660.

Any further communications should be addressed to:
THE ASSISTANT SECRETARY,
SECRETARIAL DEPARTMENT,
MINISTRY OF TRANSPORT,
WHITEHALL GARDENS, S.W.1.

and following references quoted:—
S.G. 3907.

MINISTRY OF TRANSPORT.

SECRETARIAL DEPARTMENT,

WHITEHALL GARDENS

LONDON, S.W.1.

19th April, 1929.



RECEIVED
22 APR 1929
COLONIAL OFFICE

53
5

Sir,

With reference to your letter No. 15616/29 of the 12th April relative to the Harbours Regulation Ordinance, 1928, of Kenya Colony, I am directed by the Minister of Transport to state that there are no particular matters mentioned in Section 49 of the Ordinance with regard to which he thinks it necessary to suggest that regulations made by the High Commissioner should be sent home for prior approval.

At the same time, I am to point out that in this country practically all byelaws or regulations made by local harbour authorities require confirmation by a government department or judicial authority, and in the first place have to be advertised in order to afford interested parties an opportunity of objecting. It is recognised that such a procedure is probably impracticable in the case of the harbours of Kenya, but it is suggested that consideration might be given to the question of giving public notice in advance (if this is not already done) of the regulations proposed to be made under Section 49, particularly those dealing with such matters as the charges to be imposed under Sub-section (5), in order that persons concerned may have an opportunity of expressing their views before the regulations are put into operation.

I am to add that the Minister has no observations to offer on the other provisions of the Ordinance.

I have the honour to be,
Sir,

Your obedient Servant,

J. E. Baker

The Under Secretary of State,
Colonial Office,
S.W.1.

*Copy to Secy 398-30 MAY 1929
copy to Secy 25 JUN 1929*

- Mr. Hamilton Smith 2245
- Mr. Allen 227
- Mr.
- Mr. Bottomley
- Sir E. Harding
- Sir J. Shuckburgh
- Sir G. Grindle
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lovat
- Mr. Amery

25 MAY 1929

30 May 1929

200 N. 12
A am's
1 on 1600 2/30

Sir -
I have the 6 ack. rec. of your paper No. 61 of the 29 January and to say you the Hon. Sec. will not be advised a separate list

DRAFT.

Kenya
No. 398
O.A.G.

JUN 1929

of provisions No. 33 of 1928 of the Legislature of Kenya Colony entitled

5/11/29
Copy to Board of Trade
Copy to Ministry of Transport

"An Ord. to Provide for the Regulation, Control and Management of the Harbours in the Colony and Protection of Kenya, and for Matters incidental thereto"

To Board of Trade 12/4/29 ✓
(No. 3)

To M/Transport 12/4/29 ✓
(No. 4)

From M/Transport 17/4/29 ✓
(No. 5)

From Board of Trade 01/5/29 ✓
(No. 6)

Revised No. 43/1728 ✓
Circular No. 6/1929 ✓

copy to M/Transport

2. I enclose for your file copies of correspondence between the Board of Trade

Trade and the Ministry of
Transport in regard to this
matter with copies
ord. ~~and I shall be glad~~
3. I shall be glad to send
to you your ord. on the
incident to section 8 suggested
by the Board of Trade, and
on the receipt of the Ministry
of Transport in regard to the giving
of public notice of
publication of regulations ~~to be made~~
under Section 49
~~2. I shall be glad to send~~

of the Bermuda Act No. 43 of
1925 and of the Extracts
ord. No. 1 of 1925 which the
B.O.T. refer to in their letter

et. I would require the copies of
all regulations ~~and~~
under section ~~49~~ (5) (1)
and (3) of the ord. and
send to me separately

I have etc

(Signed) L. S. AMERY

- Mr. Clay
- Mr. Allen
- Mr.
- Mr. Bottomley
- Sir E. Haring
- Sir J. Shuckburgh
- Sir G. Grindall
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lovat
- Mr. Amery

3 around
4 around
see 5
3 or so back

8 n
4

12 April 1924

DRAFT.

- (1) Secretary,
Board of Trade
- (2) Secretary,
Ministry of Transport

ST

Sir

With reference to the letter
from the Dept. No. 21344/24
and previous correspondence
of the 15th May, 1924, I am
pleased to transmit to you, for
the case of the
Board of Trade
(1) ~~Secretary, Customs~~
(2) ~~Ministry of Transport~~
the enclosed copy of a
dispatch from the DTG of
Kenya with enclosures
which he transmits copies
of the Harbours Regulation
Ordinance 1925
2. I am also to enclose
a copy of the Kenya & Uganda

RECEIVED
MAY 08 - 1924
558
Copy to

From DTG 24/4/24
Order
Legal Report
By Col. White
Kenya Railway Order (1927)
Kenya Railway Order (1927)
Kenya Railway Order (1927)

2/7/24

1927 which the ...
Ordinance (1927) ...
Kajira Orasi is included; together with other of the
Kenya and Uganda (Transport)

Orders - in - Council (1925 & 1927) C

~~as above enclosed~~

Mr Amey will be
glad to receive any
notes which

the Post Office
the ~~Post Office~~ ...

... - Lt. Ashley

may have to offer on the

Head Post Office Legislation

Order

Section 49 of the Ordinance

confers wide powers upon the

It is in the matter of making

regulations. Such regulations are subject to

the allowance of other under the

interpretation. Several clauses Orasi

...; although it would

not seem necessary in several of

which such regulations should be sent home

for prior approval, there may be

particular matters ... which the ...

... such a course desirable ...

(Signed) H. T. ALLEN

- Mr. Cliffe: 22-IV-29
- Mr. Allen: 2
- Mr.
- Mr. Bottomley
- Sir E. Harding
- Sir J. Stuckburgh
- Sir G. Grindle
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lond.
- Mr. Amey

DRAFT.

The V-Sops
Foreign Office

For Order ...
Order (in original
Legal Report for ...)

(All Allen's verbal instructions)
Apr. 1929.

X 15511
30
1929

18 Apr 1929

April 1929
With ref. to your letter of
the 9th April 1929 (AT 919/
1929/60) to the subsequent ...

I am in to ...
you for the info of
Secretary of State
Chamberlain the enc
copy of a despatch from
the ... of Kenya
... regarding the ...
Regulation Ordinance, 1928,
... with a copy of
the ... Order and of the
legal report on it

I am to ...
Sir A. Chamberlain's attention

15/10

in particular to the
provisions regarding the
fixing of ^{other} ~~tariffs~~ duties
in Sections 3(4) and
49
~~4~~(5) of the Order

(Signed) J. T. ALLEN

I have annotated the Ordinance in the margin to show which provisions are similar to those in the Railway Ordinance, and this applies particularly to Part I, - Powers of the High Commissioner, Part III General Offences, Part IV Supplemental Provisions, and to some extent Part V Regulations and Repeal. Part II relating to Harbours is of course special. Comparing the two Ordinances, it might appear that there is considerable repetition since the Railway Ordinance also deals with Harbours and Ships: ^{See} ~~the~~ ^{Definitions} ~~of~~ ^{of} Harbours ⁱⁿ the Ordinance is limited to ^(A) parts on the Lakes ^{that ship} the vessels used by the Services.

There is no detailed statement with the Ordinance showing where the various ^{provisions} ~~provisions~~ have come from if adopted from existing legislation elsewhere. They merely say that when drafting the Bill full advantage was taken of experience gained in other parts of the Empire.

The Ports Ordinance, 1922, ^{was} referred to by the Board of Trade and the Ministry of Transport. The Board of Trade raised one or two points in 21020/23 and the Ministry of Transport one point in 23743/23. The first Board of Trade point related to the raising of wrecks; in the present Ordinance this matter is left to be dealt with by Regulation, see Section 49(6) & (7); the second point related to the exemption of particular vessels from compulsory pilotage, the Board of Trade holding that such exemption should only apply to particular "classes" of vessels. Section 8 of the present Ordinance makes pilotage compulsory save and except in respect of such ships as may be exempted

This was flexible method of dealing with the subject ought to be satisfactory.
R.H.

This note should ensure the provision being general & not confined to particular vessels.
R.H.

exempted by law or by regulation.

The Ministry of Transport commented on the alternative penalty of imprisonment for disobedience of rules and orders of Government under Section 19 of the ¹⁹²² Ordinance. The Colonial Government replied to these criticisms in 46483/23 and on 54581/23 the Governor was informed that the Ordinance might remain in force without amendment unless experience should show that the provisions to which attention was drawn will not work satisfactorily. A report on the working of the ¹⁹²² ~~last four months~~ ^{Ordinance} came home in 5852/25 in which it is stated that the working had proved satisfactory.

The alternative is retained in 5.49
As

Attention should also be drawn to the fact that the French Government protested against the enforcement of the 1922 Ordinance (see 17180/24). Considerable correspondence resulted and led to a general discussion of the Treaty position (see 38426/25) See also the reply to the French Govt. in 30664/24.

(17180/24)

The French complaint against the rules specifying in detail the dues etc., to be levied under the Ordinance, and the reply to the French Government, took the line that the dues were "an equivalent for services rendered to navigation itself", but it will be seen from the later correspondence on 55810/24 that the Foreign Office on re-consideration thought that it would have been better to defend the policy on broader lines, though it was agreed that at the moment no further reply should be sent to the French Government. Section 3(r) of this Ordinance gives the High Commissioner power "to fix, demand and alter from time to time shipping, harbour and light dues,

(20954/25)

wharf

wharf charges, fees in respect of licences, permits or certificates, and fees for piloting, berthing and mooring or other services at any harbour". Sub-section 6(s) empowers the High Commissioner to delegate to the General Manager any of the powers conferred upon him by this Ordinance. Further, under Section 49(6) the High Commissioner may issue regulations for "the fixing and determining of ships dues, wharfage charges and light dues and other harbour dues and charges and the payment and the exemptions from payment thereof."

The powers to issue regulations under Section 49 are very wide, but to a substantial extent they follow the powers of the Railway Ordinance and deal with matters which seem clearly proper for dealing with by regulations, but I notice that in some cases, e.g., the raising or removal of wrecks there were definite provisions in the 1922 Ordinance.

W. H. ...
 (17/1/26)



GOVERNMENT HOUSE,
NAIROBI
KENYA.

KENYA.

No. 61

RECEIVED
22 FEB 1929
COL. OFFICE

JANUARY, 1929.

30

Sir,

I have the honour to transmit to you, for signification of His Majesty's pleasure, two authenticated copies of Ordinance No. XXXIII of 1928 entitled "the Harbours Regulation Ordinance, 1928", together with two copies of the Legal Report.

The Ordinance passed its third reading in Legislative Council on the 21st December, 1928, and I assented to it in His Majesty's name on the 31st December, 1928.

2. As you are aware fresh legislation to replace the Port Ordinance of 1922 proved necessary to give effect to that part of the Transport Order in Council of 1925 relating to Harbours, and the Ordinance now transmitted has been under consideration for over two years.

3. The attached copy of Legislative Council debates of the 22nd August, 1928, records the proceedings at the second reading of the enactment and I would invite reference in particular to the Acting General Manager's speech moving the second reading, in which he emphasises the care taken when drafting the Bill to take full advantage of

the/

Legislative
Council Debates.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L. C. S. ALERY, P.C., K.P.
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S.W.

*46 (assessing to send) 12 APR 1929
by hand*

Ord 398 30 MAY 1928

11305/23

6

the experience gained by other parts of the Empire in matters relating to the control of harbours.

4. As indicated in the attached copy of the Report of the Select Committee of Legislative Council appointed on the 22nd August to review the Bill a number of amendments were introduced into the Bill before it passed its third reading on the 21st December.

5. Twelve printed copies of the Ordinance will be sent to you in the usual manner in due course.

I have the honour to be,

Sir,

Your most obedient humble servant,

[Handwritten Signature]
ACTING GOVERNOR.

[A 2653/2653/60]

RECEIVED
8 MAY 1929
COL. OFFICE

Reference:

Colonial Office letter of 12th April
N^o. 15616/29.

WITH THE COMPLIMENTS
OF THE
UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS.

The Under Secretary of State
Colonial Office

Foreign Office,

7th May 1929.

9
AN ORDINANCE

No. 33 of 1928.

Assented to in His Majesty's name this thirty-first day of December, 1928.

J. W. BARTH
Acting Governor.

[31st DECEMBER, 1928.] Date of assent.

An Ordinance to Provide for the Regulation, Control and Management of the Harbours in the Colony and Protectorate of Kenya, and for Matters incidental thereto.

By Proclamation.

Date of commencement

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

PRELIMINARY.

1. This Ordinance may be cited as "the Harbours Regulation Ordinance, 1928," and shall come into force on such date as the Governor shall by proclamation in the Gazette appoint.

Short title and commencement.

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

Interpretation.

"Board" means the Harbour Advisory Board established by the Order in Council;

"Bridge" means any fixed structure of wood, stone, brick, iron or other material erected over any water to make a passage way from one side to the other;

"Ferry" means any floating vessel plying from one side of a waterway to another for the purpose of the carriage of passengers, animals, goods or vehicles;

"Foreshore" means the sea shore between high water mark and low water mark;

"Goods" means goods, luggage, or other movable property of any description, and includes animals and birds, whether alive or dead;

"General Manager" means the General Manager for the time being of the Services;

"Harbours" means and includes all the ports and harbours on the coast of the Colony of which the High Commissioner has or may in the future have the control, working or management, and all the wharves, jetties, slips, docks and breakwaters, and the machinery, plant, tools, and other property appertaining thereto;

"High Commissioner" means the High Commissioner for Transport established by the Order in Council;

"High Water Mark" means the highest point reached by ordinary spring tides at any season of the year;

"Imprisonment" means imprisonment of either description;

"Low Water Mark" means the lowest point reached by ordinary spring tides at any season of the year;

"Master" in relation to a ship, means any person (other than a pilot) having charge of that ship;

"Mombasa" includes the ports of Kilindini and Mombasa Old Port;

"Mombasa Old Port" means the old port of Mombasa;

"Order in Council" means the Kenya and Uganda (Transport) Orders in Council, 1925 and 1927;

"Perishable Goods" means goods liable to rapid deterioration, and includes fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, dogs, small animals, birds, poultry, and any other thing which may hereafter be declared by the High Commissioner by proclamation in the Gazette, to be perishable goods;

"Pilot" means a person for the time being authorised by the General Manager, in accordance with rules made under this Ordinance, to pilot vessels;

"Police Officer" includes any member of the Police Force;

"Port Captain" means the officer appointed by the High Commissioner to take charge, under the General Manager, of the marine branch of a harbour, or the officer acting as such for the time being;

"Port Manager" means the officer appointed by the High Commissioner to take charge, control and management under the General Manager, of the marine and shore departments of the Services, including the Port and Marine Department established under the Port Ordinance;

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"Port Officer" means the officer appointed to take charge of a particular port under the General Manager;

"Servant" means any person employed by the High Commissioner in the Services;

"Services" means the Services as defined in the Order in Council;

"Ship" includes any vessel, ship, tug, lighter or boat of any kind whatsoever, whether propelled by steam or otherwise, or towed;

"Terminals" includes ships dues and charges in respect of wharves, depots, warehouses, cranes and other similar matters and of any services rendered thereat;

"Warehouse" means any building, place or truck provided by the High Commissioner for the purpose of storing or depositing goods.

PART I.

POWERS OF THE HIGH COMMISSIONER.

Powers of the High Commissioner.

3. In addition to the powers conferred on him by the Order in Council, the High Commissioner shall have power as follows:

- (a) In so far as is not inconsistent with the provisions of any law, to acquire, take, use, hire, purchase, work, sell, lease, deliver, transfer or otherwise lawfully dispose of property, whether movable or immovable, including water, ships, and other rights for harbour purposes and turn the same to account;

(b) To construct, maintain and repair any harbour works or any roads, bridges, or any other works whatsoever, or to negotiate with any person for such construction and to complete agreements concerning the same: Provided that no harbour or similar work or bridge over a navigable waterway shall be constructed without the sanction of the Legislative Council, and that no such sanction shall be given without a prior report thereon or any alternative harbour or similar work by the General Manager;

(c) To enter into agreements with any person whether in the Colony or elsewhere in connection with matters affecting or incidental to the control, working and management of the harbours, including contracts for the supply of water or electric energy to ships or to persons, and to grant powers of Attorney and like authorities;

(d) To construct, procure, maintain, and repair ferries and other ships to carry passengers and goods, and to use the same for plying for hire;

(e) To reclaim, excavate, enclose or raise any part of the lands in a harbour area;

(f) To clean, deepen, or improve any portion of a harbour, and for any of these purposes to construct or procure and maintain and repair any dredgers or other appliances;

(g) Subject to the provisions of the Electric Power Ordinance, to generate either for his own purposes or for purposes outside a harbour area electric and other energy; Cap. 105.

(h) To carry on the business of a builder and repairer of ships and machinery and of a wharfinger;

(i) To construct, provide, lay down and repair moorings and all means and appliances for berthing, loading and unloading vessels;

(j) To construct, provide, maintain and repair, and moor vessels and hulks for the storage and working of coal and other goods;

(k) To construct, procure, maintain and repair ships, and use the same as well within a harbour as on the high seas, and whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any ship, whether entering or leaving a harbour or bound elsewhere, and for the purpose of saving or protecting life or property, or recovering property lost, sunk or stranded;

(l) To supply water to shipping in any harbour, and for that purpose to construct, procure, maintain and repair, and use ships or appliances;

(m) To carry on the business of a lighterman and carrier by land and sea, and to construct, procure, maintain and repair ships and carts, wagons, and other means of conveyance necessary for such purpose;

(n) To control, manage and superintend all harbours, docks, or other similar works within his jurisdiction, the persons working or otherwise engaged therein or thereon, the ships, goods and persons arriving at or departing from the same, and, if deemed necessary, to limit the right to land, warehouse, deliver, or ship any goods within any harbour;

- (o) To stevedore, land, ship, transfer or lighter goods, regulate and control lighterage within any harbour, and to warehouse, deliver and collect any such goods, and to land or ship persons, either himself or by his duly constituted agents;
- (p) To erect, maintain, and regulate lighthouses, beacons, port lights, and signal stations, and to provide the necessary staffs for the same;
- (q) To establish and maintain lifeboats, life-saving apparatus, and such other works, institutions, or appliances as he may deem to be necessary for the requirements of any harbour;
- (r) To fix, demand and alter from time to time the stopping, harbour and light dues, wharf charges, fees in respect of licences, permits or certificates, and fees for piloting, berthing and mooring or other services at any harbour;
- (s) To delegate to the General Manager any of the powers conferred upon him by this Ordinance;
- (t) Generally, to execute and do all such acts, deeds and things as may be necessary for the control, working and management of harbours included in the Services:

Authority of
the High
Commissioner
to execute all
necessary work

4. (1) Subject to the provisions of this Ordinance, and, in the case of immovable property, to the provisions of any enactment for the time being in force for the acquisition or resumption of land for public purposes, the High Commissioner may for the purpose of constructing, maintaining or working a harbour or other or similar works or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force:

- (a) Make or construct in, upon, across or over any lands, or any streets, roads, railways, tramways, or any rivers, canals, streams or other waters, or any drains, pipes, water-pipes, gas-pipes, or telegraph or electric power lines, such temporary or permanent arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, cuttings and fences as the High Commissioner may think proper;
- (b) Alter the course of any rivers, streams, or water courses for the purpose of constructing and maintaining bridges, passages, or other works, and divert or alter, as well temporarily as permanently, the course of any rivers, streams, or water courses, or any roads, streets, or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or by the side of any harbour or any other works connected therewith, as the High Commissioner may think proper;
- (c) Make, alter or repair drains or conduits into, through or under any lands for the purpose of conveying water from or to any harbour or other works;
- (d) Erect and construct such houses, warehouses, offices and other buildings, and such yards, machinery, apparatus, and other works and conveniences as the High Commissioner may think proper;

- (e) Maintain, alter, repair or discontinue any harbour buildings, works, and conveniences as aforesaid or any of them, and substitute others in their stead;
- (f) Sink wells and construct dams and all other works necessary for providing a water supply;
- (g) Do all other acts necessary for making, maintaining, altering or repairing any harbour.

(2) The exercise of the powers conferred on the High Commissioner by sub-section (1) shall be subject in so far as they affect property and interests outside harbours to the provisions of any law for the time being in force.

5. The High Commissioner may for the purpose of exercising the powers conferred upon him by this Ordinance, alter the position of any pipe for the supply of gas, water or oil, or the position of any electric wire, or of any drain not being a main drain.

Alteration of
pipes, wires
and drains.

Provided that—

- (a) when the High Commissioner desires to alter the position of any such pipe, wire, or drain, he shall give reasonable notice of his intention to do so, and of the time he will begin to do so, to the local authority or company having control over the pipe, wire or drain, or when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;
- (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the High Commissioner shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing during the execution of the work the supply of gas, water, oil or electricity, or the maintenance of the drainage, as the case may be.

6. It shall be lawful for the High Commissioner or any person authorised by him, in the case of any accident from whatever cause happening or being apprehended to any cutting or embankment or other works connected with any harbour or other or similar work, to enter upon any land adjoining such harbour or other or similar work for the purpose of repairing any damage caused by such accident or of guarding against any apprehended accident and to do such work as may be necessary for the purpose.

Powers in
case of
accident.

7. (1) The High Commissioner shall do as little damage as possible in the exercise of the powers conferred by sections 4, 5 and 6, and compensation shall be paid for any damage caused by the exercise thereof.

Payment of
compensation

(2) A suit shall not lie to recover such compensation but in case of dispute the amount thereof shall be determined and paid in accordance, so far as may be, with the provisions of sections 11 to 15 both inclusive, sections 18 to 24 both inclusive, and sections 53 and 54 of the Indian Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of the Act shall apply to the award of compensation.

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Provided always that, notwithstanding anything in this section hereinbefore contained, any person aggrieved by the exercise by the High Commissioner of the powers conferred upon him by sections 4, 5 and 6 may refer the matter in dispute to the decision of two arbitrators, one to be appointed by the High Commissioner and one to be appointed by the person aggrieved, and the provisions of the Arbitration Ordinance shall apply to such reference.

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PART II.
HARBOURS.

Compulsory pilotage harbours.

8. The Port of Mombasa is hereby declared to be a compulsory pilotage harbour (together with such other harbours as may from time to time be declared by the High Commissioner by proclamation in the Gazette to be compulsory pilotage harbours) save and except in respect of such ships as may be exempted by law or by regulation: Provided that the High Commissioner and any pilot who is in the service of the High Commissioner shall be exempt from liability for any loss or damage that may arise or be caused through the act, omission, or default of such pilot.

Ship's papers, etc., to be produced.

9. The master of every merchant ship arriving in a harbour shall, upon demand, produce and show the ship's register and ship's papers to the Port Captain or other authorised officer for his inspection, and shall deliver a list of his passengers with a description of their rank, sex and occupation, together with a list of any deaths or removals that may have occurred during the voyage, and shall report, in writing, if any person has stowed himself away or concealed himself on board of any such ship without the knowledge or consent of the master; and shall provide the High Commissioner with any other information with regard to the ship or the lading thereof as he may require; and any master not duly accounting for every individual aforesaid, or falsely accounting for any of them, or refusing to deliver the list when thereunto required as aforesaid, shall be liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding three months.

Clearance outward may be refused until regulations have been complied with and charges paid.

10. The Commissioner or other proper officer of Customs at any harbour may refuse to give the master of any ship in such harbour clearance outward until he has paid the dock or harbour dues, duties or charges of all kinds, which may be due from him or his ship and until he has received from the authorised officer a certificate setting forth that he has complied with the requirements of this Ordinance and with the regulations of the harbour, and every such ship shall be subject to a lien in favour of the High Commissioner in respect of the amount so due.

Responsibility of ship master for contraventions.

11. In the case of any contravention of this Ordinance or of any regulation on board any ship within a harbour, the master of the ship may be proceeded against in respect thereof and may be held liable for the contravention.

The High Commissioner, after notice, may retain goods until charges paid.

12. If at the time of landing and delivery at a harbour of goods to the High Commissioner for transit and/or delivery to the consignee, the shipowner notifies the High Commissioner, in writing, that freight or other charges to the

amount specified in the notice remain unpaid in respect of these goods, the High Commissioner may retain and refuse delivery of the goods to the owner or any other person until—

- (a) production of a receipt for the amount, notified as aforesaid, signed or purporting to be signed by or on behalf of the shipowner; or
- (b) production of a release from payment of the amount notified as aforesaid, signed or purporting to be signed by or on behalf of the shipowner; or
- (c) payment of the sum claimed, together with any charges and duty in respect of the said goods, shall have been made.

13. If the High Commissioner on production of a receipt or release or on payment, as aforesaid, deliver the goods to the party producing the receipt or release or making the payment, no liability whatsoever shall attach to the High Commissioner in respect of the goods either to the shipowner, the consignee, the owners, or any person whatsoever.

Action which may be taken by the High Commissioner in respect of the goods.

14. Whenever any goods are placed in the custody of the High Commissioner under the authority of section 12, the High Commissioner shall be entitled to rent in respect of the same, and shall also have power at the expense of the consignee of the goods to do all such reasonable acts as in the judgment of the High Commissioner are necessary for the proper custody and preservation of the goods and shall have a lien on the goods for the rent and expenses.

The High Commissioner entitled to charge for rent and necessary expenses.

15. Nothing in this part of the Ordinance shall be construed as obliging the High Commissioner to take charge of any goods which he would not have been liable to take charge of if this Ordinance had not been enacted, or as binding the High Commissioner to enquire into the validity of any claim for freight or other charges made by any shipowner.

Saving clause.

16. Wherever under sections 12, 13 and 14 of this Ordinance any act requires to be done, any notice to be given, or any receipt and release to be produced to the High Commissioner, such act, notice or receipt and release shall be deemed to have been validly done, given or produced if done by, given to, or produced to the Port Manager or other officer authorised by him at the harbour.

Notice, etc., to whom given.

17. (1) If any person fails to pay on demand made by or on behalf of the High Commissioner any terminal or other charge due from him to the High Commissioner in respect of any goods, the High Commissioner may detain the whole or any of the goods or, if they have been removed from any harbour, any other goods of such person then being in or thereafter coming into his possession.

Lien for terminal or other charge.

(2) When any goods have been detained under subsection (1), the High Commissioner may sell by public auction, in case of perishable goods at once, and in the case of other goods on the expiration of at least ten days' notice of the intended auction, published in one or more of the local newspapers, sufficient of such goods estimated to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the High Commissioner may retain a sum equal to the charges and expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the goods, if any, as remain unsold, to the person who in the opinion of the High Commissioner is entitled to such surplus.

(4) If any person on whom a demand for any terminal or other charge due from him has been made fails to remove from the harbour within a reasonable time any goods which have been detained under sub-section (1) or any goods which have remained unsold after a sale under sub-section (2), the High Commissioner may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the preceding sub-sections, the High Commissioner may recover by suit any such terminal or other charge aforesaid or any balance thereof.

18. (1) When any goods have come into the possession of the High Commissioner and are not claimed by the consignee or other person appearing to the High Commissioner to be entitled thereto, the High Commissioner shall, if such consignee or person is known, cause a notice to be served upon him requiring him to remove the goods.

(2) If such consignee or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the High Commissioner may, within such time as he may deem fit, sell the goods as nearly as may be under the provisions of the last preceding section, rendering the surplus, if any, of the proceeds of the sale to the person who in the opinion of the High Commissioner is entitled thereto: Provided that no imported goods shall be sold under this Ordinance which have not been entered in accordance with the provisions of the Customs Management Ordinance, 1926.

19. When any goods or sale proceeds in the possession of the High Commissioner are claimed by two or more persons, or documentary proof of ownership to the satisfaction of the High Commissioner is not forthcoming, the High Commissioner may withhold delivery of the goods or sale proceeds until the person entitled in his opinion to receive them has given an indemnity, to the satisfaction of the High Commissioner, against the claims of any other person with respect to the goods or sale proceeds.

20. (1) No person shall be entitled to compensation for the loss of goods unless his claim for compensation, giving full and detailed information as to the goods and supported by such documentary evidence as may be reasonably required has been preferred in writing by him or on his behalf to the High Commissioner within four months from the date of delivery of the goods to the High Commissioner.

(2) No person shall be entitled to compensation for damage to or deterioration of goods unless his claim for compensation, giving full and detailed information as to the goods and supported by such documentary evidence as may be reasonably required has been preferred in writing by him or on his behalf to the High Commissioner within one month from the date of the delivery of the goods to the consignee.

Disposal of unclaimed goods.

The High Commissioner may withhold delivery of goods.

Claims for compensation for goods must be made within four months.

21. The High Commissioner shall not be responsible for loss, destruction or deterioration of any goods in respect of which a wrong or improper or insufficient description or address for delivery has been given, if the loss, destruction or deterioration is in any way brought about by giving such wrong or improper or insufficient description or address.

Relief from liability in case of goods improperly described.

22. (1) The High Commissioner shall in no case be liable for any loss or damage to any goods in his custody at a harbour, if the loss or damage be caused by the act of God or of the King's enemies, the perils or accidents of the sea, fire, flood, tempest, civil commotion, riots or strikes; or for—

Limitation of the liability of the High Commissioner in respect of the act of God, etc.

(a) the loss of weight or measure or the deterioration of goods by heat, decay, rust, sweat or change of character of such goods as may be handled by the High Commissioner or deposited in warehouses, or on premises under his control, or as may be otherwise in his charge; or for any loss of contents of bags through shifting or for internal breakage, or for deficiency in contents of unbroken packages; or for

(b) loss of or damage to castings, machinery or other goods not protected or insufficiently protected, or insecurely packed, or from leakage arising from defective drums, tins or packages; or for

(c) the loss of or damage to goods by vermin or insect pests except upon proof that such loss or damage arises from the negligence of his servants; or for

(d) loss of or damage to animals arising from inherent vice, or from any cause other than that arising from the negligence of his servants; or for

(e) loss of or damage to goods caused from maintaining too high or too low a temperature in any warehouse or cool chamber or failure of machinery or plant not due to negligence on the part of the servants of the High Commissioner.

PART III. GENERAL OFFENCES IN RESPECT OF HARBOURS AND SHIPS AND BY SERVANTS.

23. Any person who does or causes or procures to be done any of the following acts, namely who—

Punition for certain classes of offences.

(a) Trespasses upon any portion of a harbour closed to the public or on any ship the property of the High Commissioner or on any work under construction or under repair, or in a specially prohibited place;

(b) Wilfully gives a false name and address to a servant or police officer;

(c) Is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of others in or about any harbour or upon any ship;

(d) Does or attempts to do anything which may cause injury to persons employed or being in or about any harbour or upon any ship;

- (e) Commits any act of indecency or uses profane, obscene, indecent, or abusive language in or about any harbour or upon any ship;
- (f) Writes, draws, or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any part of any harbour or upon any ship;
- (g) Defaces the writing on any board or on any notice authorised to be maintained at any harbour or upon any ship;
- (h) Smokes in any goods shed, warehouse, or in proximity to any cargo or inflammable material or in any other places within any harbour or upon any ship where notice boards prohibiting smoking are erected;
- (i) Disobeys while upon harbour premises the reasonable directions of a servant or police officer;

shall be liable to a fine not exceeding ten pounds or to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.

Penalties for certain other classes of offences.

24. Any person who does or causes or procures to be done any of the following acts, namely, who—

- (a) Pulls down or attempts to pull down or wilfully injures or attempts to injure any board or document set up or posted by order of the High Commissioner in any harbour or upon any ship;
- (b) Gives or offers to a servant any money or anything of value for the purpose of evading payment of any sum due under this Ordinance;
- (c) Fails to deliver at the earliest possible opportunity to a servant any property found in or about any harbour or upon any ship belonging to the High Commissioner or removes from a harbour or any ship any property so found;
- (d) Wilfully obstructs or impedes a servant in the discharge of his duty;
- (e) Discharges from a ship or within a harbour any firearm, or throws stones, metal, bricks, gravel, timber, glass, bottles, or other articles likely to obstruct or injure anyone engaged in working in or about a harbour or ship, or attempts to do any of the foregoing acts;
- (f) Removes or attempts to remove from any harbour or ship the property of the High Commissioner or from any harbour premises any rolling stock, tarpaulins, tools, appliances, or property of any kind, or permits any such rolling stock, tarpaulins, tools, appliances or property to be unlawfully in his possession or on his premises;

shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Penalties for grave offences.

25. Any person who voluntarily and without lawful authority or excuse does or causes or procures to be done any of the following acts, namely, who—

- (a) Damages, removes, or in any other way interferes with any lighthouse, buoy, mark or beacon, sets adrift, or otherwise causes damage to any ship, or causes any damage to harbour property or equipment;

- (b) Cuts down, breaks, removes, destroys, or injures any fence, building, or bridge or any other property in or about any harbour;
- (c) Removes any crates or tackle, points, wires, sleepers, rails or machinery or floating equipment in or about a harbour, or moves any part of the rolling stock or floating equipment in or about any harbour;
- (d) Obstructs or does anything which may obstruct the free use of any wharf, jetty, quay, railway or foreshore, or the approaches thereto;

shall be liable to a fine not exceeding £500 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

26. (1) If a minor under the age of sixteen years is, with respect to a harbour or ship, guilty of any of the acts mentioned or referred to in any of the three last preceding sections, he shall be deemed, notwithstanding anything in section 83 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping not exceeding sixteen strokes with a light cane, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts.

Special provisions with respect to the commission of offences by children.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as a fine.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be liable to a fine not exceeding five pounds.

27. (1) If any person wilfully makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, that person shall be liable on conviction to a fine not exceeding £50, and in addition shall pay to the High Commissioner as penalty double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

Penalty for false claim, etc.

(2) If any person negligently makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, the High Commissioner may require such person to pay as penalty a sum not exceeding double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

28. If any person wilfully or without lawful excuse refuses or neglects to obey any lawful direction of the Port Manager, Port Captain or Port Officer, he shall, for every such offence, be liable to a fine not exceeding ten pounds, or, in the case of a continuing offence, to a further fine not exceeding ten pounds for every day during which he shall without lawful excuse continue to disobey such instructions.

Penalty for refusing or neglecting to obey lawful direction of Port Manager, etc.

(e) Commits any nuisance or set of indecency, uses profane, obscene, indecent, or abusive language in or about any harbour or upon any ship;

(f) Writes, draws, or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any part of any harbour or upon any ship;

(g) Defaces the writing on any board or on any notice authorised to be maintained at any harbour or upon any ship;

(h) Smokes in any goods shed, warehouse, or in proximity to any cargo or inflammable material or in any other places within any harbour or upon any ship where notice boards prohibiting smoking are erected;

(i) Disobeys while upon harbour premises the reasonable directions of a servant or police officer;

shall be liable to a fine not exceeding ten pounds or to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.

24. Any person who does or causes or procures to be done any of the following acts, namely, who:—

(a) Falls down or attempts to pull down or wilfully injures or attempts to injure any board or document set up or posted by order of the High Commissioner in any harbour or upon any ship;

(b) Gives or offers to a servant any money or anything of value for the purpose of evading payment of any sum due under this Ordinance;

(c) Fails to deliver at the earliest possible opportunity to a servant any property found in or about any harbour or upon any ship belonging to the High Commissioner or removes from a harbour or any ship any property so found;

(d) Wilfully obstructs or impedes a servant in the discharge of his duty;

(e) Discharges from a ship or within a harbour any firearm, or throws stones, metal, bricks, gravel, timber, glass, bottles, or other articles likely to obstruct or injure anyone engaged in working in or about a harbour or ship, or attempts to do any of the foregoing acts;

(f) Removes or attempts to remove from any harbour or ship the property of the High Commissioner or from any harbour premises any rolling stock, tarpaulins, tools, appliances, or property of any kind, or permits any such rolling stock, tarpaulins, tools, appliances or property to be unlawfully in his possession or on his premises;

shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

25. Any person who voluntarily and without lawful authority or excuse does or causes or procures to be done any of the following acts, namely, who:—

(a) Damages, removes, or in any other way interferes with any lighthouse, buoy, mark or beacon, sets adrift, or otherwise causes damage to any ship, or causes any damage to harbour property or equipment;

Penalties for certain other classes of offences.

Penalties for grave offences.

(b) Cuts down, breaks, removes, destroys, or injures any fence, building, or bridge or any other property in or about any harbour;

(c) Removes any cranes or tackle, points, wires, sleepers, rails or machinery or floating equipment in or about a harbour, or moves any part of the rolling stock or floating equipment in or about any harbour;

(d) Obstructs or does anything which may obstruct the free use of any wharf, jetty, quay, railway or foreshore, or the approaches thereto;

shall be liable to a fine not exceeding £500 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

26. (1) If a minor under the age of sixteen years is, with respect to a harbour or ship, guilty of any of the acts mentioned or referred to in any of the three last preceding sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping not exceeding sixteen strokes with a light cane, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as a fine.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be liable to a fine not exceeding five pounds.

27. (1) If any person wilfully makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, that person shall be liable on conviction to a fine not exceeding £50, and in addition shall pay to the High Commissioner as penalty double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

(2) If any person negligently makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, the High Commissioner may require such person to pay as penalty a sum not exceeding double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

28. If any person wilfully or without lawful excuse refuses or neglects to obey any lawful direction of the Port Manager, Port Captain or Port Officer, he shall, for every such offence, be liable to a fine not exceeding ten pounds, or, in the case of a continuing offence, to a further fine not exceeding ten pounds for every day during which he shall without lawful excuse continue to disobey such instructions.

Special provisions with respect to the commission of offences by children.

Penalty for false claim, etc.

Penalty for refusing or neglecting to obey lawful direction of Port Manager, etc.

OFFENCES BY SERVANTS.

Drunkenness.

29. If a servant is in a state of intoxication while on duty, he shall be liable to a fine not exceeding five pounds, or, where the improper performance of the duty would be likely to endanger the safety of any person employed or being upon harbour premises or upon any ship, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment.

Endangering the safety of persons.

30. If a servant, when on duty, endangers the safety of any person—

- (a) by disobeying any regulation made, sanctioned, published and notified under this Ordinance; or
- (b) by disobeying any rule or order which is not inconsistent with any such regulation, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or with which he was required to make himself acquainted; or
- (c) by any rash or negligent act or omission.

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

Leaving Services without having given the requisite notice.

31. (1) If a servant before leaving the Services shall fail to give to the High Commissioner the notice specified in his agreement (if any), or provided by any regulation under this Ordinance or under the Order in Council, he shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the High Commissioner from any moneys due to him, and he shall in addition be liable to a fine not exceeding fifteen pounds.

(2) Whenever a servant, being a member of the crew of any ship, is guilty of the offence of leaving the service without giving the notice specified in the preceding sub-section, or of absence without leave, he may be arrested by any police officer without warrant, or the master of the ship may, with or without the assistance of the police, convey him on board the ship.

(Sg. 729)

(3) Nothing in this or the preceding sections contained shall be deemed to exempt a servant from punishment under the Employment of Natives Ordinance, or any Ordinance amending or substituted for the same.

Punalty for demanding more than is due

32. Any servant who, with intent to defraud, asks or receives a greater sum or a lesser sum than is allowed by law and is provided by the regulations or tariff then in force for the facilities provided at a harbour by the High Commissioner, or for any other services performed by the High Commissioner, shall, in addition to such other action as may be decided by the High Commissioner in regard to the termination of his employment, be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

PROCEDURE.

Arrest for offence against certain sections.

33. (1) If a person commits any offence mentioned in sections 23, 24, 25, 29 and 30, he may be arrested without warrant or other written authority by any police officer, or in the absence of a police officer by any servant or by any other person whom such police officer or servant may call to his aid.

(2) A person so arrested shall, with the least possible delay, be taken before a magistrate having authority to try him or commit him for trial.

34. (1) If a person commits any offence under this Ordinance, other than an offence mentioned in the last preceding section, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name and address given by him is incorrect, any servant or police officer or any other person whom such servant or police officer may call to his aid may, without warrant or other written authority, arrest him.

Arrest of persons likely to abscond or unknown.

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond, without sureties, for his appearance before a magistrate when required.

(3) If the person cannot give bail and his true name and address are not ascertained, he shall, with the least possible delay, be taken before the nearest magistrate having jurisdiction.

35. The High Commissioner may appoint as many persons as may be deemed necessary for the duty of maintaining order in or about any harbour, and when any such person so appointed is carrying out that duty he shall be capable of exercising all such powers and shall perform all such functions as are by law conferred on or are to be performed by a police officer, and shall be liable in respect of acts done or omitted to be done to the same extent as he would have been liable in like circumstances if he were a member of the police force of the Colony, and shall have the benefits of all the indemnities to which a member of the police force would in like circumstances be entitled.

Appointment of persons to maintain order in or about harbours.

36. (1) Any person committing any offence against this Ordinance shall be triable for such offence in any place in which he may be, or which the Governor may notify in this behalf, as well as in any place in which he might be tried under any law for the time being in force.

Place of trial.

(2) Every notification under sub-section (1) shall be published in the Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such harbours as the Governor may direct.

PART IV.

SUPPLEMENTAL PROVISIONS.

37. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of rates or taxes in respect of the harbours in aid of the funds of local authorities, namely:—

Taxation of harbours by local authorities.

(1) The High Commissioner shall not be liable to pay any sum in respect of rates and taxes to the funds of any local authority unless the Governor in Council has by notification in the Gazette declared the High Commissioner to be liable to pay such sums.

(2) The Governor in Council may at any time revoke or vary a notification under sub-section (1) of this section.

(3) Nothing in this section is to be construed as debarring the High Commissioner from entering into a contract with any local authority for the supply of water or light, or for the scavenging of harbour premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(4) "Local Authority" in this section means a municipal corporation or committee, district board, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or other fund.

38. None of the tugs, motor launches, boats, lighters, trucks, trolleys, cranes, tools, plant, machinery, fittings, workshop materials, materials or effects used or provided by the High Commissioner for harbour purposes, shall be liable to be taken in execution of any decree or order of any Court, or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the High Commissioner.

39. (1) Every servant shall be deemed to be a public servant for the purpose of Chapter IX of the Indian Penal Code.

(2) A servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under sections 17 or 18; or

(b) in contravention of any direction of the High Commissioner in this behalf, engage in trade.

40. If a servant be dismissed from the service for fraud, dishonesty or misconduct, or retire from the service in order to avoid dismissal, or be ordered to resign on account of misconduct, he shall be refunded the amount of his own contributions only to any provident, pension or superannuation fund controlled by the High Commissioner, to which he may have contributed: Provided that, in the case of a member dismissed for fraud or dishonesty, the High Commissioner may deduct from any sums payable to such member under this section the amount of any loss which the High Commissioner may have sustained by reason of such fraud or dishonesty.

41. (1) When the immediate arrest of a servant, either with or without warrant, would be likely to endanger the safety of any person being in or about any harbour or upon any ship, or to cause serious inconvenience to the High Commissioner, the police officer whose duty it is to make such arrest shall at once apply to the Port Manager, Port Captain or Port Officer to relieve such servant, and shall arrange so to watch him that he does not escape, and on such servant being relieved such police officer shall arrest him and proceed according to law.

(2) The relief of a servant under the preceding sub-section shall be effected with the least possible delay.

Restriction on execution against harbour property.

Harbour servants to be public servants.

Disposal of Provident Fund contributions in event of dismissal from the Service.

Arrest of a harbour servant.

42. If a servant be discharged or suspended from his office, or dies, absconds, or absents himself, and he or his wife or widow or any of his family or representatives refuses or neglects, after notice in writing for that purpose to deliver up to the High Commissioner, or to a person appointed by the High Commissioner in this behalf, any dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the High Commissioner and in the custody or possession of such servant at the occurrence of any such event as aforesaid, any magistrate may, on application made by or on behalf of the High Commissioner, order any police officer with proper assistance to enter upon the building and remove any such person found therein, and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the High Commissioner or to a person appointed by him in that behalf.

Procedure for summary delivery to the High Commissioner of property detained by harbour servant.

43. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the High Commissioner for any of the purposes of, or in relation to, this Ordinance or any of the powers or provisions therein contained, shall be sufficient and binding if in writing signed by the officer or servant deputed by the High Commissioner to communicate his directions in respect of the matters to which the same may relate, and the High Commissioner shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in the manner aforesaid.

Made of signifying communications from the High Commissioner.

44. Any notice or other document required or authorised by this Ordinance to be served on the High Commissioner may be served on the General Manager or such other officer as may be appointed by the General Manager for the purpose—

Service of notice on the High Commissioner.

(a) by delivering the notice or other document to the General Manager or his agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid registered letter addressed to the General Manager or his agent at his office.

45. Any notice or other document required or authorised by this Ordinance to be served on any person by the High Commissioner may be served—

Service of notice by the High Commissioner.

(a) by delivering to the person; or

(b) by leaving it at the usual or last known place of abode of the person; or

(c) by forwarding it by post in a prepaid registered letter addressed to the person at his usual or last known place of abode.

46. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Presumption where notice is served by post.

Limitation of actions.

47. (1) No action the cause of which shall have arisen after the commencement of this Ordinance shall be brought against the High Commissioner unless the same be commenced within twelve months after the cause of action arose.

(2) No action shall be commenced against the High Commissioner until one month at least after written notice of intention to commence the action has been served upon the High Commissioner by the plaintiff or by his attorney or agent. In that notice the cause of action and details of the claim shall be clearly and explicitly stated.

(3) In any action against the High Commissioner, no execution or attachment or process in the nature thereof shall be issued against the High Commissioner or against any property of His Majesty, but the General Manager shall pay out of the Railway and Harbour Fund such sums of money as shall by the judgment of the Court be awarded to the plaintiff.

Representation of the High Commissioner in Court.

48. (1) The High Commissioner may authorise the General Manager to act for or represent him, or to appoint any other person to act for or represent him, in any proceeding before any civil, criminal or other court.

(2) The General Manager, or any other person appointed by him to conduct prosecutions shall be entitled to conduct such prosecutions without the permission of the magistrate.

PART V.

REGULATIONS AND REFERRAL.

Regulations.

49. The High Commissioner may, in addition to the powers conferred upon him by the Order in Council, make, vary or revoke regulations, not inconsistent with this Ordinance, with respect to any of the following matters, that is to say, with respect to:—

- (1) The proper control and management of any anchorage, tidal river, foreshore, dock, basin or harbour, and the entrance thereto, the removal of any obstruction therein, and the preservation from injury of any works, buoys, dredgers, ships or other property connected therewith;
- (2) The erection of buildings or other structures, or the planting of posts or poles that may interfere with the proper working of any harbour or the signals or beacons thereof;
- (3) The regulation of the stevedoring, landing, shipping, transhipping, delivery, collection and warehousing of goods at any harbour, the fixing of minimum hours of work in ships loading or discharging cargo, and the minimum tonnage to be loaded or discharged in a working day, and the declaration of the tonnage and valuation of goods imported or exported and the necessary declarations and statements in support thereof;
- (4) The proper control of all ships entering or within any harbour, or coming alongside any jetties, piers, quays, or wharves, or anchoring or mooring within the limits of any harbour, and, subject to the provisions of any law relating to merchant shipping, the taking of measures for the prevention of ships from leaving any harbour if overloaded or improperly

loaded or insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety, or if so improperly found or otherwise unseaworthy;

(5) The fixing and determining of ships dues, wharfage charges, and light dues and other harbour dues and charges, and the payment and the exemptions from payment thereof;

(6) The prevention of shipwrecks and casualties to ships, and the protection of ships and cargoes wrecked or in danger of being wrecked, and the removal, destruction or abandonment of wrecks and wreckages and anchors, dangerous or likely to become dangerous or a nuisance, or that obstruct or are likely to obstruct the fairway of any harbour, and the levy and recovery of a rent for the right of a hulk or wreck or any wreckage to lie in any harbour, and the saving of life in case of shipwreck;

(7) The removal or sale of stranded ships and their cargoes and appurtenances; the payment of fines, expenses of sale and other charges incurred in connection therewith; and the disposal of the proceeds of sale;

(8) The promotion of efficiency and discipline in the pilot service, and the service upon ships or works connected with any harbour or lighthouse, lifeboat or life-saving apparatus, and provision for the examination, registration and licensing of pilots, and the charges to be made by pilots, their duties and obligations;

(9) Subject to the provisions of any law relating to merchant shipping, the examination and certification of masters, mates and engineers of ships engaged in local trade, whalers, tugs, dredgers, fishing boats and light craft, and the charges and licences payable in respect thereof, and, subject as aforesaid, the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft, and the number of passengers to be carried on the same, and the charges to be paid for the registration, licensing and inspection of the same;

(10) The granting of licences to ferrymen, boatmen, and porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcels agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the regulation of charges leviable by them, and their duties and the hours of their attendance at work;

(11) The regulation of the use of all landing places, ships, gridirons, docks, shears, cranes, slights, warps and coaling or other appliances, and the regulation of the traffic within any harbour area;

(12) The licensing or other authorisation of admission on to the wharves, docks, jetties, or other works of any harbour at any special times of any hotel representatives, landing agents, or other persons soliciting patronage from passengers on ships arriving at or departing from any such harbour;

- (13) The prohibition of smoking in or on wharves, jetties, quays, buildings, or rolling stock;
 - (14) The prevention of obstructions and the preservation of good order on the foreshore, and on banks of rivers, wharves, jetties, landing places, breakwaters, and other works within his jurisdiction;
 - (15) The duties and conduct of carmen, draymen, carriers, and persons other than servants of the High Commissioner who ply for hire to or from any wharf, building, or other place which is under the control of the High Commissioner;
 - (16) The admission of the public to, or their exclusion from, any of the harbours, docks, wharves, jetties and landing places, and the charges (if any) to be made for admission, and the closing to the public, for such period as the High Commissioner may think fit, of any harbours, docks, wharves, jetties, sheds, roads, or landing places under his jurisdiction;
 - (17) The prevention of damage or injury to any harbour, dock, slip, wharf, jetty, landing place or other works and premises, ships or any property whatever;
 - (18) The prevention of the commission of any nuisance in or upon any harbour, foreshore, dock, wharf, jetty or landing place, and generally the promotion and ensuring of good sanitation, cleanliness and decency within any harbour;
 - (19) The charges to be made for warehousing goods under his control and for their care or custody, and the terms and conditions upon which they shall be received, and provision for the disposal of unclaimed goods;
 - (20) The definition for the purposes of this Ordinance of dangerous or offensive goods and the conditions under which and the times when those classes of goods shall be landed, shipped, or transhipped, and the prohibition of the landing, shipping or transhipping of those classes of goods, and provision for or sanctioning of the removal or destruction of the same;
 - (21) The use of harbour land for coal stands, depositing or forwarding sites, pipe lines, power lines and the like, and whether the same shall be overhead, underground, or submarine;
 - (22) Advertising and bookstalls at any harbour and the fixing of the hours and days during which any such bookstall may remain open for the use of the public;
 - (23) The sale of liquors and refreshments within a harbour, and the imposition of licensing fees in respect of the sale of such liquors and refreshments;
- and generally with respect to the use and working of harbours and for the good government thereof, and the maintenance of order thereon and therein.

The regulations may provide penalties for any contravention thereof or failure to comply therewith, and may also impose different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty shall exceed a fine of fifty pounds or imprisonment for a period of six months, or both such fine and imprisonment.

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As often as the contravention of or failure to comply with any such regulation causes damage to any property under the management or control of the High Commissioner, the person causing the damage shall, in addition to any penalty which may be imposed under the Regulation, be liable to the High Commissioner for the amount of the damage done.

A copy of all regulations for the time being in force shall be published in the Gazette and kept at the Port Office at each Harbour and any person shall be allowed to inspect the same free of charge.

The Port Captain or other authorised officer shall on demand cause to be delivered to the master of any ship arriving at any harbour a copy of this Ordinance and of such harbour and quarantine regulations as may be in force in the harbour.

51(1) The Port Ordinance (Chapter 107 of the Revised Edition) is hereby repealed.

Provided that all rules, regulations, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under the said Ordinance or under any other Ordinance or Order in Council relating to Harbours shall, so far as they are consistent with this Ordinance, be deemed to have been respectively made, given, approved, conferred, and published under this Ordinance.

(2) All reference in any enactment or document to the Ordinance hereby repealed shall, as far as may be, be construed as references to this Ordinance.

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WEDNESDAY, 22nd AUGUST, 1928.

The Council assembled at 9.30 a.m. on the 22nd August, 1928, at Government House, Mombasa, His Excellency the GOVERNOR (SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.), presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF THE OATH.

The Oath of Allegiance was administered to:—

Ex-Officio Member.

BRIGADIER-GENERAL GODFREY DEAN RHODES, C.B.E., D.S.O., Acting General Manager, Kenya and Uganda Railways and Harbours.

MINUTES.

The minutes of the meetings of the 17th and 20th August, 1928, respectively, were confirmed.

PAPERS LAID ON THE TABLE.

By THE HON. THE DIRECTOR OF PUBLIC WORKS:—

Report of the Public Works Department for the year 1927.

ORAL ANSWERS TO QUESTIONS.

WATER SUPPLY AT ELDORET.

THE HON. T. J. O'SHEA asked:

(1) When is it expected that the water supply at Eldoret will be available for the public?

(2) What is the cause of the excessive delay in completing its construction?

THE HON. THE DIRECTOR OF PUBLIC WORKS replied:

(1) It is expected that the major portion of the township will be supplied by the end of September.

(2) The delay has been due to the pipes not having arrived as soon as anticipated and it is stated to have been due to a breakdown at the suppliers' factory.

THE HON. T. J. O'SHEA: Your Excellency, arising out of that answer, may I ask whether the contract for the supply

of these pipes includes a delivery clause and what compensation, if any, has been made to Government in respect of the delay in delivery of such pipes.

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, the matter has been referred to the Crown Agents for the Colonies and they are enquiring into the matter. We have no details here.

THE HON. T. J. O'SHEA: Your Excellency, again arising out of that, may I ask why the building of the reservoir which is a necessary part of the scheme was not given out to contract until a fortnight or three weeks ago, when it will take three months to complete.

THE HON. THE DIRECTOR OF PUBLIC WORKS: I shall require notice of that question.

ELDORET SCHOOL BUILDINGS.

THE HON. T. J. O'SHEA asked:—

"In round figures, what is the estimated loss to the 31st July, on the building of the new school at Eldoret due to delays arising out of materials not being available when required?"

THE HON. THE DIRECTOR OF PUBLIC WORKS replied:

The loss on account of increased overhead charges is estimated to have been between £300 and £400.

THE HON. T. J. O'SHEA: Your Excellency, arising out of that answer, may I ask what has been the loss in unproductive labour?

THE HON. THE DIRECTOR OF PUBLIC WORKS: I am not aware of any other loss than that which I have stated, Your Excellency.

THE HON. T. J. O'SHEA: May I ask what has happened to the men who have been standing idle during the time the materials have not been available?

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, I am not aware that any men have been standing idle during that period. The delay has been due to the failure of the contractor to supply bricks and I believe that the men were employed on other work during that interval. I am perfectly certain they were not standing idle.

ELDORET NATIVE HOSPITAL.

THE HON. T. J. O'SHEA asked:—

"When were the new native hospital buildings at Eldoret completed, and at what cost?"

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ELDORET NATIVE HOSPITAL.

THE HON. T. J. O'SHEA asked:—

"When were the new native hospital buildings at Eldoret completed, and at what cost?"

How many patients have been treated there up to 31st July, 1928?"

THE HON. DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. GILKS) replied:—

The new native hospital buildings at Eldoret are, I understand, complete except for additional drainage, the installation of which is strongly advised by the Medical Officer of Health, Eldoret. The matter is under consideration with a view to provision from savings on the cost of erection.

2. I am informed by the Public Works Department that the actual cost of erection of the new native hospital at Eldoret has not yet been arrived at; the figure will not, however, exceed the original estimate.

3. The building has not yet been taken over and no patients have been treated therein.

THE HON. T. J. O'SHEA: Arising out of that answer, may I ask whether it is not the case that the buildings were actually completed three or five months ago?

THE HON. DIRECTOR OF MEDICAL AND SANITARY SERVICES: Your Excellency, may I refer that question to my hon. Friend the Director of Public Works? Otherwise, I must have notice of that question.

THE HON. T. J. O'SHEA: On a point of order, may I point out that that question was embodied in the original question?

HIS EXCELLENCY: There is no obligation on members of the Government to answer a supplementary question, but they can answer any supplementary question if they wish to do so.

THE HON. T. J. O'SHEA: Will Your Excellency be good enough to see if that question was not down in the original question?

HIS EXCELLENCY: The Hon. the Director of Medical and Sanitary Services has answered it to the best of his ability. If the hon. Member is not satisfied with the answer he will no doubt put it down again in another form.

DEFINITION OF ENCLOSED LAND.

THE HON. CONWAY HARVEY asked:

"Will Government be pleased to consider the introduction of an amendment to section 2 of Ordinance No. 10 of 1924 so that a railway, road or other easily identifiable permanent mark may be included in the definition of 'farm boundary'?"

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT replied :

The answer is in the affirmative.

KITALA WATER SUPPLY.

LIEUT. COLONEL THE HON. J. G. KIRKWOOD asked :

"What provision has been made towards providing funds for the Kitale water supply?"

THE HON. THE DIRECTOR OF PUBLIC WORKS replied :

No provision has yet been made. A sum will be included in the Draft Estimates for 1929 for the consideration of this Council."

MOTIONS.

PROPOSED FILM CENSORSHIP RULES.

THE HON. T. A. WOOD : Your Excellency, in proposing this motion I will ask the leave of the House to alter the word "the" to the word "a"—that is the word "the" occurring before "Select Committee." When I drafted the resolution I was not aware that the Select Committee concerned had already been dissolved and therefore the motion standing in my name is not exactly, in my humble opinion, correct. I would ask to be allowed to move—

That this Council resolves that the proposed Rules regarding censorship of films be referred back to a Select Committee for reconsideration."

HIS EXCELLENCY : The hon. Member can move that later as an amendment to his motion, but I think it would be simpler to move his motion and then move the amendment later if he chooses to do so. It is purely a verbal amendment and I have no doubt there will be no difficulty in Council.

LIEUT. COLONEL THE HON. LORD FRANCIS SCOTT : Your Excellency, I beg to second the motion.

THE HON. T. A. WOOD : I beg to move.—

That this Council resolves that the proposed Rules regarding censorship of films be referred back to the Select Committee for reconsideration."

I would like to preface my remarks by an apology to those members of the original Select Committee who must have spent considerable time in preparing their recommendations, and were it not for the fact that there is an overwhelming volume of popular opinion against these proposals, I would be one of the last to question their advice to Government on

the subject. Now, I like to look at the position this time from the Government point of view. I take it the ideal of Government in this country is the development and elevation of the native races, but they must not lose sight of the fact that they have partners in that undertaking—their principal partner being the members of the European community. So one has to take extreme care that there should be nothing introduced into local public life which is calculated to depreciate the value of that partnership. And when it comes to the exhibition of films, especially in a country of mixed races such as we have, one of the most important considerations is to control that element of depreciation, more especially in regard to the women folk—that, I think, is the foundation of this opposition which has arisen in very great strength from a well-known women's association, the East African Women's League.

We find that the proposals under these Rules depart in principle from the established practice elsewhere to a marked degree, although my contention is that this is a country in which we have to take more care. Take for example one proposal. The films which have been censored in other parts of the world may be passed without other censorship here. I submit with respect that films that are censored in England are not necessarily suitable to this country. Again, many films that are censored in South Africa are censored specifically for European audiences as against all other audiences. The proposal to appoint one censor with a Board of Appeal appears to me to be likely to break down very early. I cannot conceive that individual being prepared to take the responsibility and it seems to me that the Board of Appeal would be a body which would have to do the work. Why not therefore follow the practice in other countries and appoint a censorship board of three people in the first instance?

There is another point in this argument which seems clear and that is what was the reason for these alterations? We had a censorship which appeared to work very smoothly until we got up against trade interests. Trade interests complained that they were being harshly treated and the existing legal machinery was broken down.

On the question of the necessity of very careful scrutiny in regard to the films which are to be exhibited in such a country as this, I beg to refer to what the Prime Minister of England had to say on this subject. He is reported to have said that he looks with the greatest apprehension on the effect of exhibiting the commoner type of films, as representing the white races, to the coloured races. Presumably he included all coloured races without distinction. Another reason why one has to take great care is that owing to some slackness

at some point we have already had a regrettable instance in this country. I refer to the case of an exhibition—I think at Kitale—of a film entitled: "Trapped by the Mormons." I understand that this was suppressed by the action of the local population. That indicates another weakness in these proposed Rules. I gather that there is an Appeal Board to which the public can appeal, and I suggest that possibly by that time the damage will have been done; that is to say that before they can get an opportunity to judge, and have a ground for their appeal, the film will have been exhibited. Now, Sir, as I am perfectly certain that I have the support, at any rate of all members on this side of the House:

THE HON. T. J. O'SHEA: No.

THE HON. T. A. WOOD: With the exception of the Hon. Member for Plateau South, I have very little more to say. I don't wish to cover the whole of the ground, more particularly as they have very kindly permitted me, almost the youngest among those who have been recruited at the moment to propose this motion, in the first instance.

HIS EXCELLENCY: Now that the question is before the House I think it will be convenient if the hon. Mover will move his amendment, so that we can dispose of that and resume the debate on the main question.

THE HON. T. A. WOOD: With Your Excellency's permission, I will propose that the motion be amended by the substitution of the word "a" for "the" before the words "Select Committee."

HIS EXCELLENCY: The question is that the motion be amended by the substitution of the word "a" for "the" before the words "Select Committee."

THE HON. CONWAY HARVEY: I think there can be no doubt, Sir, that the present film censorship arrangements are totally inadequate when such films are exhibited to coloured races as portraying blood-thirsty scenes from the French Revolution, the massacre of the Huguenots, and attacks by Red Indians on the early settlers of Virginia, and while in the advertisement columns of the "Standard" I notice a recent cinema attraction is described as "a thrilling story of the debauchery of King James I court." A really star film exhibited on June 30th is described as "Screendom's supreme achievement, depicting all the emotions of the human heart—love and lust, pathos and passion, courage, bravery and strength."

Now, Sir, I may be old-fashioned, but I am not a purist.

This sort of food develops criminals and idiots and should certainly be barred to all African coloured races whose criminal instincts will develop quite quickly enough without the stimulus of picture shows of this description. The prestige of the white man, who is likely to remain the governing race in Africa for all time, must inevitably suffer from the exhibition to natives of howling mobs tearing through the streets of Paris with gory heads held aloft on crude, improvised weapons; men rioting with women in night clubs and various phases of domestic infidelity.

The theory that the cinema is being used as propaganda to wear down slowly and subtly the prestige of the white race in the eyes of the coloured races is undoubtedly based on a large amount of fact, and I do consider that we in Kenya should follow the lead of practically all civilised countries and insist on a rigid system of censorship.

I have looked into the matter and I think I am right in saying that every country, colony and dependency has these matters controlled by a carefully selected Board of Censors. So important is this work considered that in South Africa the Transvaal Board of Censors will not accept the finding of the Cape Colony's Board of Censors. They insist on doing it independently themselves. In Australia the Federal Ministry appointed a Royal Commission to go into this matter. That Commission unanimously recommended the appointment of a board of three censors, one of whom should be a woman. I think in this matter it is very important indeed that so far as possible all the East African Dependencies and Colonies should embrace a common policy. In Tanganyika all films are censored by a Board of five representative people and I consider that we in Kenya might quite appropriately fall into line with these Colonies in this respect.

In many ways Kenya leads the way and I think it is very unfortunate indeed that in an important social matter of this sort Kenya should lag far behind, not only the rest of the civilised world, but even its adjacent territories.

I trust Your Excellency will appoint a strong and representative Committee which will hear evidence from anyone who is likely to prove helpful and that the justification will be forthcoming for a set of Film Censorship Rules more in keeping with the requirements of Kenya than the Rules which have failed so lamentably hitherto.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, as a member of the Film Censorship Committee I associate myself with the desirability of reopening the whole matter, because, Sir, although that Film Censorship Committee made

definite recommendations, those recommendations were not embraced in the Rules decided upon. Rather than merely having Rules, I think it is desirable that we have definite legislation to deal with this subject and not deal with it as an incidental part of controlling stage plays and shows. I believed that at the time of the framing of these recommendations that all the films entering this country should be censored, and that we should not accept the censorship of any other country where other conditions are and dissimilar races exist. We are not concerned in the working of the censorship of films, as it may be a duty which will occupy the whole of the time of several persons; and, if necessary, we hope that several persons will be appointed to censor the films. If, Sir, it occupies the whole of their time it will not matter. It is important that the work should be done, no matter how much work is involved in it.

THE HON. T. J. O'SHEA: Your Excellency, I have pleasure in opposing this motion, very largely because it gives me an opportunity of making a public protest against certain efforts and appeals, although I know I am in the minority of opinion on the subject. In carrying out their propaganda to bring about a more severe censorship of films, a certain ladies' association endeavoured to secure my support. I begged to disagree with their views and then an effort was made to compel me to express my opinion on that subject. Therefore—largely as a protest against that attitude—I oppose the motion. I do so, Sir, at the same time to gain a hearing on this important subject. With the necessity for censoring films to be shown to the native population of the country, I am entirely in agreement. I agree, even though I hold the view that it is necessary to restrict, as far as ever possible, the interference of Government in the aesthetic activities of the people. Government's are, as a rule, very stupid and very unintelligent when they endeavour to enter into that sphere. To listen to the learned speech of the Hon. Member for the Lake one would think that the films that are being shown in this country and available to natives have been doing an immense amount of harm. I suggest that we keep to the facts and leave this theorising out of the question for the moment. There have been a number of cinema theatres in this country for a period of years showing films under a sort of censorship. The sort of pictures some people would object to for natives have been shown to them for all these years, and one would have thought that if there was any likelihood of them acquiring a taste for that sort of thing, they would have done so long ago. What are the facts. It is a very small number of African people who go to see the pictures. I am not myself a film fan but I have ascertained that those who are endeavouring to make a living out of the supply of these films find a very

small number of natives going to their shows. I agree that a censorship of films for natives is necessary, because a native has not that wider knowledge of life to give him the right perspective. But, when it comes to an effort to give an extra censorship to films for the Europeans in this country, I most emphatically protest. The recommendations of the committee are in my opinion quite adequate to deal with the situation. It is carrying the thing too far. There is no necessity for Government to take the place of the parents and supervise the pictures that are being shown to children. It is suggested that a board of three would be better than one individual censor. I disagree, and I suggest that those who are so keen on a board of three instead of one individual are not conversant with the work that is necessary if it is to be properly done. I understand that in England the Chief Censor there is paid a very large salary indeed and that he has a staff to assist him in the performance of his functions. Here, in Kenya, there are, I should think, not less than ten different films shown per week. To exercise the function of a censor properly, each and every one of those films should be seen in its entirety by the censor. I should like to know how this committee of three will exercise these functions. Again, Sir, I think those who are so keen on a more severe censorship have left out of consideration that there are many other directions in which the mind of the native and the mind of the Indian and the mind of the juvenile European can be affected in ways to which people can take exception. Going across the ferry recently I noticed that the natives were bringing home their purchases from the native market wrapped up in pieces of paper torn from two well-known English periodicals, the circulation of which is as great a menace to the development of the native as any films which are distributed. (Hear, hear.) It seems to me that you are allowing the Government to mould policy upon the views of a limited section of the community. If another committee is going to be appointed to go into this matter, I sincerely hope it will not be unduly pressed by vagaries of people who are a very small section of the community and that every effort will be made to hear the views of those who have the temerity to disagree with their point of view.

LIEUT. COLONEL THE HON. LORD FRANCIS SCOTT: Your Excellency, I support this motion and first of all I should like to reply to some of the remarks of my hon. Friend on the right (the Hon. T. J. O'Shea). He said in his opening remarks that he was representing the minority opinion. Therefore, I presume he recognised that the majority does agree with this motion, and I am sure that such a good democrat as he is believes that the majority rules, though further on he says this is all an agitation by a very small section of the community.

Judging by the correspondence I have had from my own constituency it seems to be the unanimous wish in that constituency anyhow.

I have had letters from all the associations there and not only from the East African Women's League. The Women's League does now represent a very big proportion of the women of the country and from all quarters—from all the branches of the Women's League—the correspondence shows that they feel very strongly on this subject.

Another of the hon. Member's arguments, Sir, is that, as very few natives have so far attended the cinemas, it does not matter so much. Well, Sir, I do not think it is really an argument. It is very fortunate, if there have been bad films shown, that very few natives have seen them. But that is no guarantee that more natives will not get into the cinemas in the future. Now is the time to close the door—it is no use waiting until the horse has left the stable.

Another thing he said was that it was no good bothering about films when some of the newspapers coming into this country printed matter which did even more harm. Well, Sir, if we could prohibit these newspapers from coming into the country it would be an excellent thing, but it is not practical politics—unless the publishers give some reason, such as for instance publishing seditious matter, etc., to prohibit certain newspapers.

The reason why I support this motion is because I believe I am voicing the general feeling of the people throughout the country, and there are three points on which the people are specially keen, one is the question of a censorship board of three. Well, Sir, I think there are arguments both ways for a single censor or a board of three or more. In other countries it has been found that it is better to have more than one. In most other countries—and even quite recently in Australia—they have appointed a Board of three, including a woman, and I do think in this country there should be a lady on the censorship board.

With regard to doing the work, there is one man—one censor—who has got to do it in any case, the ladies of the Colony are prepared to find another one, and it is only a question of a third one over which they may be any difficulty.

Personally I think these cinematograph shows are such a very big agent for either good or evil that it is well worth the country's while spending a little money to ensure that the people are guided in the paths of good and not evil.

I do not think there is any question that the films shown in Great Britain to-day have added enormously to crime,

especially so amongst the juveniles, and I do not think that because a film is passed for exhibition in England it is necessarily suitable for other countries. Many of the films shown there certainly cannot be of any use and, on the other hand, they may do a great deal of harm.

Two years ago, when I was attending the Unofficial Conference at Livingstone, the representative of all the Territories present were unanimously in favour of a very strict censorship on films and they also agreed that they could not accept films which had been censored by other countries.

The one exception which was quoted at that time was the Transvaal censorship. That is very much stricter on account of the difficulties they have with various racial questions, and, as has already been stated by the Hon. Member for the Lake, the Transvaal will not accept films which have been censored in Cape Colony.

I do hope, Your Excellency, that Government will see their way to accept this motion, because I do feel it is very generally the desire of the country at large, and it would cause a great deal of satisfaction to the people of the country if Government could see their way to agree to this.

MAJOR THE HON. R. W. B. ROBERTSON-EUGACE: Your Excellency, I wish cordially to support this motion and, as one who has had considerable experience in censorship of films in this country, I thoroughly endorse the view that the censorship should be increased to three persons. When I was censoring here I refused to licence two films for show to Europeans. In regard to one I had to give way as it had been already shown in Nairobi, but the other was not allowed. I always welcome any censorship of films. I do not agree that it is necessary for a censor to go straight through a film which is well-known.

Another point. If possible, I should wish that a very large proportion of the films allowed in this country should be of British manufacture. In Australia they insist on a very large proportion of films being of British manufacture.

REV. CANON THE HON. H. LEARRY: Your Excellency, as one who holds the view that an invention which might have the most extraordinary high educative value is in danger of becoming, if it has not already become, a terrible curse in Europe and the world over, because of the tendency to pander to the tastes of those who wish for anything but elevating pictures, I entirely agree with those who have already spoken in favour of greater care being taken in the choice of films to be exhibited to such a mixed population as we have in this Colony.

I was glad to learn from a former speaker that the natives have not yet learned to squander their money on going to see such pictures as we are dealing with, but I would like to point out that the posters which are shown in our streets to advertise them are a disgrace and must tend to lower the prestige of the white man in the eyes of the natives. I think it is a disgusting sight to see a crowd of untutored and uneducated natives in the streets of our capital, and of this town, standing and gazing at some of the pictures of people with white faces which are exhibited on the posters.

Assuming that the object of the hon. Mover's motion is that there may be a very much severer censorship of films in the future I most cordially support the motion.

LIEUT.-COLONEL THE HON. J. G. KIRKWOOD: Your Excellency, I am in sympathy with the motion before this hon. House, and I suggest that it is more or less a domestic matter. The difficulties seem to be mostly on the financial side—whether it should be a single censor or a board of three. I think this should be left to the House to decide, and it should also have the support of Government.

I think there can be no question that this side of the House is very much in favour of the motion, and I trust that Government will support the motion.

THE HON. THE ACTING COLONIAL SECRETARY (MR. MARTIN): Your Excellency, I have been somewhat puzzled by the course of this debate. It is not the sort of debate which one expected, and no rules or amendments to the 1913 Ordinance have been suggested.

The whole course of the debate has been really on the insufficiency of the Regulations as they stand at the moment, and I have been rather puzzled by the fact that detailed criticism of the new proposed Rules has hardly been made by any speaker.

It may be that a board of appeal from a single censor is machinery so absurd that it could not possibly have any obstructive influence, but that may have been taken for granted. I do suggest, however, that it is a point which might be elaborated more.

What I gather is the root of the trouble is that, whereas discussions in the past rather centred on avoiding over-strict application of censorship, the fear now is that it may be too lenient. Well, Sir, there may be recent events—in fact, there have been recent events—which may have put that thought in the minds of people and this is the only case for the reconsideration of the machinery so far suggested.

I have therefore to say, on behalf of Government, that the Government is prepared to accept the motion. (Hear, hear.)

HIS EXCELLENCY: Does no other hon. Member wish to address the House? Does the hon. Mover wish to exercise his right of reply?

THE HON. T. A. WOOD: No, Sir.

HIS EXCELLENCY: The question is:—

That this Council resolves that the proposed Rules regarding censorship of films be referred back to a Select Committee for reconsideration."

The question was put and carried.

BILLS.

FIRST READING.

AERIAL NAVIGATION (REPEAL) BILL, 1928.

On motion of the Hon. the Acting Solicitor General (Mr. McCarthy) the Aerial Navigation (Repeal) Bill was read a first time.

Notice was given to move the second reading at a later stage of the Session.

SECOND READINGS.

HARBOURS REGULATIONS BILL, 1928.

THE HON. THE ACTING GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIGADIER-GENERAL RHODES): Your Excellency, I beg to move the second reading of the Harbours Regulations Bill, 1928.

I do not propose to take up the valuable time of this Council unduly by giving a lengthy description of this Bill.

The need for a Harbours Regulations Bill is well known. It is required to give effect to that part of the Transport Order in Council of 1925 relating to Harbours and was referred to by Your Excellency in your opening address to this Council this Session.

The Bill itself has been under consideration for over two years. In drafting the Bill advantage was taken to consult every possible source of information regarding the practice found essential in other parts of the world. South African legislation was carefully studied, as also legislation dealing with the Malay Peninsula and the harbours of Singapore and Penang.

It is believed, therefore, that the Bill is a comprehensive one, framed on practical lines and based on experience elsewhere. In addition, it has been brought into line as far as possible with existing laws in the Colony, including the recently enacted Railway Ordinance.

Moreover, it has, I think, been before every representative body who would be interested in such matters, and their recommendations have been carefully considered and, where possible, incorporated in the revised draft now before Council.

Finally, the Harbour Advisory Board have very carefully examined the Bill, and, I understand, are unanimously in favour of it. I trust this fact will be given due weight, as the Harbour Advisory Board is fully alive to the requirements of the ports of the Colony and is continually giving the most valuable assistance to the Administration.

The Bill itself, as shown in the schedule, concerns Mombasa and three minor ports. Its importance is, however, regulated by the importance of Mombasa, not only to this Colony but also to Uganda.

It is essential that a Bill should be so drafted as to permit the fullest opportunity for development and efficient management. I believe the Bill now before the House to be so designed.

As stated above, the objects and reasons for this Bill are already widely known and I do not therefore at the present moment propose to deal with it any further in detail. These objects and reasons are briefly stated at the end of the Bill and it is not necessary for me to go any further into this matter. It is suggested that the principles are generally accepted. There may be details still to be thrashed out and cleared up. Government is very anxious that these details and objections should be considered and is prepared to meet any suggestion that can be accepted, in every possible way. I therefore suggest that the second reading be agreed to with as little delay as possible in order that this Bill may be referred to a Select Committee where the details themselves can be fully thrashed out.

THE HON. THE ACTING SOLICITOR GENERAL: I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

HON. J. CUMMING: Your Excellency, I have listened with great interest to everything the Hon. Acting General Manager for Railways and Harbours has said. I also admit that there have been many alterations in the revised draft. At the same time I still think that there are many points requiring careful consideration.

The first point in which I think the Bill requires alteration is that it gives too wide powers to the High Commissioner for Transport. The High Commissioner for Transport need not be the Governor of Kenya. We must remember that the Kenya and Uganda Railway to all intents and purposes is a large company with two shareholders. There is a possibility and I think it will be realised, that there will be more shareholders of this Railway. That being the case, I think Kenya should be very careful of what it does with its own property, and Mombasa to all intents and purposes belongs to Kenya.

Secondly, the powers granted to the High Commissioner for Transport are liable to conflict with the rights of the Crown, the Municipality and private persons. With Your Excellency's permission I shall give some examples.

According to clause 4, item (a), the High Commissioner for Transport can "acquire, take, use, hire, purchase, work, sell, lease, deliver, transfer or otherwise lawfully dispose of property . . . for harbour purposes and turn the same to account."

In clause 4, item (b), he can "construct, maintain and repair roads, bridges, or any other works whatsoever."

In clause 5, item (b), he can "alter streams or water courses for the purposes of constructing and maintaining bridges, passages, or other works."

In clause 5, item (f), he can "take, carry away and use any earth, stone, timber, gravel or sand out of land adjoining any harbour and other works," without necessarily consulting the municipality or the private person involved. It might be inserted that these powers should be restricted to areas excluded from Crown and private land for Port purposes.

Then again in Part IV, clause 38, "the High Commissioner for Transport shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor in Council has by notification in the Gazette declared the High Commissioner to be liable to pay the tax."

I do not think any of us wish a Municipality to be paid taxes on a Port or rather on an area railed off as a Port, but we certainly think that on ordinary buildings and such like for residential quarters the Railway should pay the same as any other department. I would therefore suggest that that clause might be re-drafted and written the other way—that "the High Commissioner for Transport shall be liable to pay any taxes in aid of the funds of any Local Authority unless the Governor in Council has by notification in the Gazette declared the High Commissioner not to be liable to pay the tax."

Then there is another important question—that is the question of the foreshore.

According to Part V, clause 50, item 14, the High Commissioner for Transport has powers conferred upon him in connection with the "prevention of obstructions and the preservation of good order on the foreshore . . . or the approaches to the same." This surely may conflict, not only with private foreshore rights but also Crown rights over Mangrove Reserves.

I think the solution would be that the whole of the foreshore rights should be vested in the Governor in Council and that the Port Authority should apply to the Governor in Council as land thereon is required for public purposes.

Thirdly, there are a number of terms used in the Bill which are not sufficiently defined, for example, according to clause 3 of the Bill "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge. I think it would be better if "ferry" was defined quite separately from "bridges" and also a proviso added that bridges may, upon sanction of the Governor in Council come under the jurisdiction of municipalities in the case of such bridges being component parts of any road scheme.

The definition of "harbour" and "port" is also too loose. A port should be definitely stated to be that area definitely allocated by the Governor in Council for port purposes.

It may further be said, I think, Sir, that the looseness of definition is also shown in the definition of the area of jurisdiction of the High Commissioner for Transport. While the extent of his jurisdiction on the seaward side is carefully demarcated, no definite limit appears to be set to the extent of his powers on the landward side. The schedule at the end of the Bill, where the area of jurisdiction of the High Commissioner is supposed to be defined—"harbours, piers or areas of sea or land mentioned in the schedule to this Ordinance"—should be amended, as it is very vague and should be more clearly put, as follows:—

1. (a) The Harbour of Mombasa, including the Port of Kilindini, Port of Mombasa, Port Reitz, Port Tudor and the whole of the waters encircling Mombasa Island. The waters of the Harbour are bounded on the seaward side by a line drawn from Ras Kurwongbe to a point on the shore of the mainland half-a-mile south of Ras Mwaka Singe.

(b) The Port of Kilindini, including such area of land as may be declared by Order of the Governor in Council

to be part of the Port of Kilindini, more particularly defined as that area etched in black on the plan attached to the report of the Port Commission, excluding such area as may be specifically allocated to Railway services only by the High Commissioner.

(c) The Port of Mombasa, including such area of land as may be declared by Order of the Governor in Council to be part of the Port of Mombasa.

HIS EXCELLENCY: I do not wish to interrupt the hon. Member, but the time for dealing with the detailed schedule is in Committee. He is going rather beyond the principles of the Bill at the present moment.

THE HON. J. CUMMING: Well, Sir, I would ask that there should be a more defined definition of the Port and I would go further and say that the question of Malindi, Lamu and Kilifi should also be considered further. Possibly the hon. and gallant Member for the Coast will have something to say about the latter.

THE HON. CONWAY HARVEY: Your Excellency, I have been asked to mention to Government that Elected Members have been rather handicapped in considering this Bill, due to the fact that at least two editions of the Bill have been published and I would suggest that in future when new editions are published that they be marked in some way so that members can very easily recognise the latest edition. It is a very real inconvenience, Your Excellency, which we would ask Government to put right.

With the main principles of this Bill, namely that the Ports should be controlled by the High Commissioner, I am sure we all must cordially agree, but a great many of what I may call the minor principles we are not quite in complete agreement with. The hon. Member who has just spoken has drawn attention specifically to a considerable number of these points. The two outstanding ones, Your Excellency, are the ownership of land and the principle that the High Commissioner should be relieved of the necessity of paying municipal taxation. I hope, Sir, it is not contemplated for one moment that port and harbour land, which undoubtedly is a Kenya asset, is to be thrown into an inter-Colonial pool, and, so far as municipal taxation is concerned, Your Excellency, it seems to me that this Bill rides completely roughshod over one of the main recommendations of the Feetham Commission. I think in Chapter VI, Your Excellency, they lay down quite clearly that the Government should in all ways share the liability of anyone else domiciled in a municipal area for municipal taxation. As Your Excellency so truly said on Monday, no public service can thrive permanently without the understanding and goodwill of the people concerned. I

Then there is another important question—that is the question of the foreshore.

According to Part V, clause 50, item 14, the High Commissioner for Transport has powers conferred upon him in connection with the "prevention of obstructions and the preservation of good order on the foreshore . . . or the approaches to the same." This surely may conflict not only with private foreshore rights but also Crown rights over Mangrove Reserves.

I think the solution would be that the whole of the foreshore rights should be vested in the Governor in Council and that the Port Authority should apply to the Governor in Council as land thereon is required for public purposes.

Thirdly, there are a number of terms used in the Bill which are not sufficiently defined, for example, according to clause 3 of the Bill "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge. I think it would be better if "ferry" was defined quite separately from "bridges" and also a proviso added that bridges may, upon sanction of the Governor in Council come under the jurisdiction of municipalities in the case of such bridges being component parts of any road scheme.

The definition of "harbour" and "port" is also too loose. A port should be definitely stated to be that area definitely allocated by the Governor in Council for port purposes.

It may further be said, I think, Sir, that the looseness of definition is also shown in the definition of the area of jurisdiction of the High Commissioner for Transport. While the extent of his jurisdiction on the seaward side is carefully demarcated, no definite limit appears to be set to the extent of his powers on the landward side. The schedule at the end of the Bill, where the area of jurisdiction of the High Commissioner is supposed to be defined—"harbours, piers or areas of sea or land mentioned in the schedule to this Ordinance"—should be amended, as it is very vague and should be more clearly put, as follows:—

1. (a) The Harbour of Mombasa, including the Port of Kilindini, Port of Mombasa, Port Reitz, Port Tudor and the whole of the waters encircling Mombasa Island. The waters of the Harbour are bounded on the seaward side by a line drawn from Ras Kunwongbe to a point on the shore of the mainland half-a-mile south of Ras Mwaka Singe.

(b) The Port of Kilindini, including such area of land as may be declared by Order of the Governor in Council

to be part of the Port of Kilindini, more particularly defined as that area etched in black on the plan attached to the report of the Port Commission, excluding such area as may be specifically allocated to Railway services only by the High Commissioner.

(c) The Port of Mombasa, including such area of land as may be declared by Order of the Governor in Council to be part of the Port of Mombasa."

HIS EXCELLENCY: I do not wish to interrupt the hon. Member, but the time for dealing with the detailed schedule is in Committee. He is going rather beyond the principles of the Bill at the present moment.

THE HON. J. CUMMING: Well, Sir, I would ask that there should be a more defined definition of the Port and I would go further and say that the question of Malindi, Lamu and Kilifi should also be considered further. Possibly the hon. and gallant Member for the Coast will have something to say about the latter.

THE HON. CONWAY HARVEY: Your Excellency, I have been asked to mention to Government that Elected Members have been rather handicapped in considering this Bill, due to the fact that at least two editions of the Bill have been published and I would suggest that in future when new editions are published that they be marked in some way so that members can very easily recognise the latest edition. It is a very real inconvenience, Your Excellency, which we would ask Government to put right.

With the main principles of this Bill, namely that the Ports should be controlled by the High Commissioner, I am sure we all must cordially agree, but a great many of what I may call the minor principles we are not quite in complete agreement with. The hon. Member who has just spoken has drawn attention specifically to a considerable number of these points. The two outstanding ones, Your Excellency, are the ownership of land and the principle that the High Commissioner should be relieved of the necessity of paying municipal taxation. I hope, Sir, it is not contemplated for one moment that port and harbour land, which undoubtedly is a Kenya asset, is to be thrown into an inter-Colonial pool, and, so far as municipal taxation is concerned, Your Excellency, it seems to me that this Bill rides completely roughshod over one of the main recommendations of the Feetham Commission. I think in Chapter VI, Your Excellency, they lay down quite clearly that the Government should in all ways share the liability of anyone else domiciled in a municipal area for municipal taxation. As Your Excellency so truly said on Monday, no public service can thrive permanently without the understanding and goodwill of the people concerned. I

sincerely trust that the Select Committee about to be appointed will invite expressions of opinion from various local bodies who can be very helpful indeed in drafting legislation which will be of permanent value. I refer to such bodies as the Port Advisory Board, the Local District Committee, the Shipping Companies and Local Administrative Officers, all of whom I suggest are capable of contributing something of very real value to the purposes of this measure.

MAJOR THE HON. R. W. ROBERTSON-EUSTACE: Your Excellency, there is one clause that may be added to the Bill. That is that the Port officer should also be given the powers of a magistrate, so that he can deal with certain cases under the Shipping Ordinance and the Master and Servants Ordinance.

Also in the schedule there is no

HIS EXCELLENCY: I would remind the hon. Member that we are discussing the principles of the Bill, and amendments to the Bill should be discussed in Committee.

THE HON. T. A. WOOD: The hon. and gallant Mover of the Bill has inadvertently compelled me to offer comments, when he said that as far as he knew the Harbour and Advisory Board were unanimous on certain points, because I happen to be a member of that body at the moment, and I for one am fully in agreement with all the principles that were put up by the Hon. Member for Mombasa, who also happens to be a member of the Harbour Advisory Board. Land in Kenya does belong to Kenya and not to the joint partnership, and also the rights and interests of the municipal body in Mombasa must be safeguarded because this Harbour organisation is going to work more or less inside their area. There are various points of that kind which occur throughout the Bill.

I think the hon. Member for Mombasa did not read the reference to the removal of earth and soil fully, because I think permission must be obtained for a thing like that under the common law when you are dealing with people's land. Provided Government is in agreement to leaving it to a Select Committee to thresh out and produce a workable measure that is fair to everyone concerned, I shall be perfectly happy.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, in this legislation one of the fundamental principles which the Feetham Commission was appointed to consider arises, and that is the principle of taxation by local authorities of possibly opposing Government authorities in the same neighbourhood.

I have raised the question of the appropriateness of taking the Feetham Commission piecemeal, and in this instance

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we find that Government utilises such portions of the report as are favourable to Government's policy, and definitely passes by such other portions of that report as are unfavourable. I raised the point before that it was inadvisable to take such portions piecemeal that were favourable to Government's policy without first discussing the report as a whole.

HIS EXCELLENCY: Does any other hon. Member wish to address Council?

THE HON. THE ACTING GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, I am glad to note that there is so little objection to the principles of the Bill, and I think that most of the details that have been referred to can adequately be dealt with by the Select Committee, which will, I hope, be a very representative one and will, as suggested, take all the evidence possible from not only people representing local interests, but possibly people representing all the country interests as well.

The idea at the back of this Bill is not to ride roughshod over any authority that already exists, but to provide for what the Port of Mombasa will become in the future and to see that legislation is so designed as to enable it to become such a Port, and further to enable the Port to be efficiently managed. That was the whole idea at the back of our minds in drafting that Bill and that idea only.

With reference to one or two points regarding the wide powers to the High Commissioner in clauses 4 and 5, and also to the remark of the Hon. Member for Nairobi North, I would also point out that very heavy compensation would have to be paid in the case of an infringement of rights. I think the effect of clause 8 in regard to compensation in connection with these and other matters has not been taken into consideration. The fact of having to pay for everything you do with other people's property is the most effective safeguard that can be devised.

Another safeguard which has not hitherto been mentioned is that all important matters concerning the Port have to be referred to the Harbour Advisory Board, which has direct access to the High Commissioner. I think those two safeguards are very important indeed.

The other point is with regard to the question of taxation. I am advised that the clause as drafted does not prevent the principles of the Feetham Report being fully incorporated and brought into force.

The question of the foreshore is a difficult one. Our only object is to see that navigation is not hindered in any way, for example if a municipality erects a pier or jetty which is

so lighted up as to interfere with the leading lights for ships entering the Harbour and so to constitute a danger. In that case we must take steps to prevent any such danger, and it is from that point of view that we are particularly anxious to make sure that there are no difficulties that exist. However, I think that this question of obstructions, preservation of good order and approaches is a matter for the Select Committee to consider.

The question of ownership of land does not arise in this Bill. The land is merely placed at the disposal of the High Commissioner and is not alienated in any way so far as I am aware.

With regard to the suggestion that the Port Officer should have the powers of a magistrate, that can be also considered. The only point that occurred to me is that if you give this officer the additional duties appertaining to a magistrate he will not have the time to do his own work in connection with the Harbours. We are rather anxious to get agreement in all these matters as far as possible, and we are also anxious to see that everybody does recognise that the Port of Mombasa is going to be a very important port indeed, and that no legislation should be drafted which is going to hinder any development in that direction.

HIS EXCELLENCY: The question is that the Bill be read a second time.

WATER BILL, 1928.

THE HON. THE DIRECTOR OF PUBLIC WORKS (MR. SERIES): Your Excellency, I beg to move the second reading of the Water Bill, 1928.

The need for the enactment of an Ordinance to provide for the conservation and control of the diversion and use of water from rivers, streams and lakes has been realised for many years by those who have been concerned with the administration of existing water law, by many of those who are using water, and by others who have studied the matter. A Bill was drafted in 1921 and was printed in 1922, but further action was held in abeyance as it appeared that the cost of administering the Ordinance if enacted would be greater than Government could agree to at that time of financial difficulty.

In 1925, Mr. Lewis, the Director of Irrigation of the Union of South Africa, visited the Colony in connection with certain irrigation projects which Government desired to have investigated, and the opportunity was taken of ascertaining his views regarding water law in this Colony. Mr. Lewis

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devoted the last chapter of his report, which was printed in December, 1925, and laid on the table in 1926, to a review of existing law and its administration in the Colony and an expression of his views regarding the principles which should guide the framers of future law and the administration of that law.

Towards the end of last year, following a motion by the Hon. Member for West Kenya, a Committee was appointed "to make recommendations regarding water legislation and control," and the report of that Committee, dated May 18th, 1928, has been laid on the table at this session. The Bill which that Committee recommended for enactment is the subject of this motion.

In view of these reports, which are in the hands of hon. Members, and which explain in some detail what existing water law consists of and how that law is administered, I do not propose to cover that ground again. I assume that those hon. Members who are interested in the subject of this Bill are conversant with those two reports.

Perhaps it would be useful, however, if I refer briefly—even at the risk of reiterating arguments already known—to what is perhaps the chief defect in existing water law and its administration. It is perhaps the chief reason for the enactment of this Bill, and nearly all the clauses are in one way or another connected with the rectification of that defect. I refer, of course, to the fact that an operator under existing law does not possess secure title for his works and his use of public water. Although he may have expended large sums on his works as authorised by water permit, although the whole of his farming or industrial operations may be dependent on the continuance of the right of user he has not got legal security of the right to continue to divert and use water by means of his works.

The document he relies on is a permit. It is an expression of the permission of Government to him to do certain things. It is not transferable, and it is withdrawable or alterable at the will of the grantor. As an instrument giving him authority to divert and use water it compares unfavourably in respect of legal security with the deed which grants him the lease of his land. What the operator relies on is, of course, the sense of equity of Government, or in other words, that Government will not act in an arbitrary manner to his detriment, by withdrawing a permission already granted, if the operator has complied with all the conditions of that permission, even though Government might be legally entitled to withdraw it. Doubtless he has a very high measure of security when the matter is viewed in this light, and I cannot call to mind any case where permission, having once been given, has been arbitrarily withdrawn.

It may be asked why it is that, if security of title of the right to divert and use water is the main thing to be achieved, it is necessary to enact such a long Ordinance.

To explain this point it is necessary to examine what the difference is between a permit to divert and use water as granted under existing law and a water right as the term is understood in other countries. The difference is somewhat similar to that between a temporary occupation licence in respect of land and a deed granting a lease of land.

In granting a permit for the diversion and use of a certain flow from a stream, we say, in effect, to the applicant: "We have some knowledge of the fluctuations of the flow of this stream, but we are not certain of them. We have already authorised the diversion and use of a considerable proportion of it to others at various points. We think there is sufficient to fulfil your requirements and that a sufficiency will remain for the reasonable future agricultural developments of the drainage area and for public purposes and for riparian amenities, but we are not sure as it has not been possible fully to study the hydrographic and economic conditions. We will grant you a permit on certain conditions, but you must understand that, although we will endeavour not to disturb you in the future, we reserve the right to do so after hydro-metric survey has provided us with greater knowledge of that stream and future development on it."

The situation is analogous to that which would arise if land had to be given out in an unsurveyed area, without waiting for survey.

An applicant coming with a sketch and details of the area he required would be likely to be told in effect: "We have a map of that area, but it cannot be relied on. We have marked the land you apply for on that map, and as far as we can see, it does not overlap other areas already applied for. It would seem that there is enough land left for such public purposes as townships, forest reserves, outspans, etc., but we cannot be sure of any of these things, until we survey the area and divide it up precisely. All we can do meantime is to give you permission to occupy under certain conditions, and although we will endeavour not to disturb you, we reserve the right to do so as a result of survey and greater knowledge of the requirements of the district."

The proper administration of land matters requires comprehensive law if security of tenure is to be given. In the same way the proper administration of waters requires comprehensive law if security of tenure is to be given.

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I wish to emphasize the great importance of the subject which we are considering. The water resources of a country are one of its most important natural resources, and it is of supreme importance that they should be properly investigated and controlled in the interests of the development of that country. Knowledge of those resources can only be acquired by hydrographic survey extending over a period of years. The administration of this Ordinance, if enacted, is dependent on that knowledge being obtained. It is not possible to give adequate security of title to operators by grant of water rights until that knowledge has been obtained. The hydrography of each body of water, whether lake or stream, requires study, sometimes over years, before reasonably accurate knowledge can be obtained. It may be observed that this principle applies with equal force to small streams as it does to large ones, for as the district served by such small streams develops, the demand for essential purposes, such as domestic, farming, and industrial purposes far exceeds the supply.

I do not propose to describe the provisions of this Bill or to defend by argument the reasons which have led to the adoption of the particular methods embodied in the Bill for dealing with particular requirements. This speech would be unduly prolonged if I endeavoured to do so. Paragraphs 10 to 22 of the report of the Committee briefly describes the provisions of the Bill.

I would mention that the Bill is the result of much investigation and study of the water laws of other countries and correspondence with the administrators of those laws. It is based largely on the Water Act of British Columbia, but some of the clauses are based on provisions in the laws of other countries, especially the Irrigation Act of the Union of South Africa.

If the principles of this Bill are accepted by passing the second reading, I propose to move that it be referred to a Select Committee.

The water resources of this Colony are all too scanty and inadequate for the full development of the country except perhaps in a few well-favoured areas. As agricultural and industrial development progresses, we shall realise more and more how much we are dependent on our water resources, and how important it is to make the maximum beneficial use of those resources.

The matter is of national importance. It therefore behoves us to conserve our water resources and not to fritter them away to individuals who will not use them in a beneficial manner. By conservation of course I do not mean holding up the water from use. On the contrary, the term "conserva-

tion implies beneficial use, for water which is not being beneficially used is of no economic importance while it remains unused.

Natural loss of water is very great in a country like this where there is a long dry season. Everyone knows that most of the streams in this Colony become markedly reduced in discharge from natural causes during the dry season as they flow from higher to lower levels and often disappear altogether by evaporation and absorption.

But failure of conservation by reason of ill-designed works is also important. As an illustration of what I mean I would observe that I have measured the flow in a particular canal in this country at its point of intake and at its point of discharge, and found a loss in three miles of 97 per cent. of the water entering the canal, only 8 per cent. of the quantity entering the canal being available at the point of discharge for beneficial use.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I trust I am in order in seconding this proposal. I have been greatly complimented by Government giving me an opportunity of seconding this motion, because the motion is essentially domestic in character. I feel, Sir, that elected Members are fundamentally responsible for legislation of a domestic character. There is one principle in this motion, which although I am seconding it, I am opposed to, and I hope, Sir, that consideration will bring the Council in agreement with me on this particular point, and that is, I consider it entirely unnecessary for Government to insist on vesting ownership of all water in the country in the Crown, because if they insist on vesting control it will be entirely sufficient for the purposes of this Bill. If Government insists on having ownership, it can then logically claim the right to sell water at its intrinsic value to the highest bidder, instead of utilising it to its greatest economic advantage from the national and not merely the financial point of view. That is a dangerous principle for any Government. The individual has a greater claim than the Crown can ever possess in this respect.

We are glad that this legislation has not been based on English legislation, because English water legislation is the worst in the world. It is based on foreign and imperial legislation. As a country England is very well watered and strict legislation is not necessary.

Again the obstructionist is prevented from exercising his malevolent influence because of powers in this Bill given to the Water Board to enable the individual to develop his rights in spite of obstruction. This legislation embodies the principle that the greatest economic utilisation dominates all alienation

of water. Now, Sir, this Bill will confer a far greater degree of security of tenure to the individual. The farmer at present has no security, but under this Bill large works involving a capital outlay can be constructed, because people will now be prepared to invest large sums of money.

In this Bill we come down to a philosophic basis, and an economic basis, and they coincide and they are based on impartiality and they are based on benevolence and they demand that the greatest economic use shall be made of water, irrespective of persons, because every drop of water which reaches the sea is a drop of water wasted, and every waterfall which is not utilised for purposes of irrigation and as a means of getting water to a place where it is required is also an asset wasted.

One might as well pour a sack of silver over a cliff, it would have the same superficial artistic effect to the eye as a waterfall would have, and its monetary value—the loss of both—would probably be equivalent if the mouth of the bag were a sufficiently large one.

In this Bill we deal with the man who is either an absentee landlord or wishes to prevent his neighbours from utilising a natural asset. An obstructionist cannot prevent the utilization of water by any man who wishes to utilise it. In the past we have had very little obstruction, but as we have had this little obstruction it is desirable to prepare the Bill in such a way as to provide for that possibility.

I hope Government will agree to reconsider the suggestion that ownership should not be dealt with as vested in the Crown. It is absolutely unnecessary to make that claim, for the control is vested in the Crown, and that is all that is required.

I hope Government will reconsider its decision on that particular point.

I commend the Bill to the Council.

THE HON. T. A. WOOD: Your Excellency, There are just two points I would like to refer to. One of them is that which has been anathematised by the Hon. Member for Kenya, and that is the principle embodied in section 4 of this Bill: "That the water is hereby declared to be the property of His Majesty." It appears to me that if an individual has already invested a certain sum of his money in some reclamation work, preventing the water going to waste, I think he has a right to object. He has conserved the water which otherwise would have gone to waste. I do not know whether inspections will be made.

There is another small point in the drafting of the Bill on page 6, clause 20, where there is no marginal note, and the result is that I was looking for it at some considerable difficulty.

REV. CANON THE HON. H. LEAKEY: Your Excellency, water being one of the necessities of life, unquestionably everything to do with the supply should be regulated by the most carefully prepared Ordinance and regulations. This is more especially so with regard to rivers passing through reserves and Crown land and alienated land where there is the possibility that in administering the Bill some form of hardship might accrue to those native reserves which have been in the past most accustomed to use their water.

I should like to mention to Your Excellency that a very representative meeting was held recently in Nairobi of people who take a great interest in native affairs. As a result of that meeting I have received a telegram to look especially into one or two clauses, which I am not detailing now, as imperilling native rights. There is no one in this House other than myself who will deal with these points and I would ask that the Select Committee be appointed to deal with them. I shall receive the points by post this morning.

HIS EXCELLENCY: If no other hon. Member wishes to address the House, I will call upon the Hon. the Director of Public Works to reply.

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, I am sorry that my Hon. Friend the Acting Attorney General is not here to-day to deal with this question of ownership, as this is a matter on which he feels very strongly. The laws of other countries vary a good deal in that respect. Some definitely establish Crown or State ownership of public water, and that is especially in the Western States of America, where State ownership of all natural waters is established by law; in many colonies and dominions it is the practice, however, merely to vest the right of user and the power to control in the Crown and as far as the administration of this Ordinance is concerned it seems to me that that would be adequate. The matter, however, should I think be dealt with and gone into by the Select Committee.

The marginal note to clause 20 has evidently inadvertently been omitted and will be put in by the Select Committee.

The hon. Member representing Native interests referred to the question of water rights in Native Reserves. That is a matter which has already received full attention in collaboration with the Hon. the Chief Native Commissioner. I hope that the Chief Native Commissioner will be a member of the Select

Committee and this matter will be re-examined in that Committee. I share the views of the hon. Member representing Native interests that it is a matter of vital importance.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried?

HIS EXCELLENCY: I see there is one more piece of business on the Order Paper. Would hon. Members prefer to deal with it now or after the interval?

THE HON. CONWAY HARVEY: I think hon. Members would prefer an interval, Your Excellency.

Council adjourned for fifteen minutes.

On resuming.

COMMITTEE STAGE.

NATIVE AUTHORITY (AMENDMENT) BILL, 1928.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. MAXWELL): Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council to consider clause by clause the Native Authority (Amendment) Bill.

THE HON. THE ACTING SOLICITOR GENERAL: I beg to second the motion.

The question was put and carried.

In Committee:

The Bill was considered clause by clause.

THE HON. THE CHIEF NATIVE COMMISSIONER: I beg to move that Council now resume its sitting.

Council resumed its sitting.

HIS EXCELLENCY: I have to report that the Native Authority (Amendment) Bill has been considered in Committee of the whole Council and is reported to Council without amendment.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to give notice that at a subsequent stage of this Session I shall move the third reading of this Bill.

SELECT COMMITTEES.

FILM CENSORSHIP RULES.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move that the following be appointed a Select Committee to consider the Film Censorship Rules:—

The Chief Native Commissioner (Chairman).
 The Acting Solicitor General.
 The Member for Nairobi North.
 The Member for the Lake.
 The Member for Kikuyu.
 The Member for West Kenya.
 The Member for Plateau South.
 The Member for the Coast.

HIS EXCELLENCY: As I understand that the membership of that special Select Committee is agreed to, there is no need to put a further motion, because it has been referred to a Select Committee in terms of the motion accepted by Government and moved by the Hon. Member for Nairobi North.

HARBOURS REGULATION BILL.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move that the Harbours Regulation Bill be referred to the following Select Committee:—

The Acting General Manager, Kenya and Uganda Railways and Harbours (Chairman).
 The Acting Attorney General.
 The Acting Commissioner for Local Government, Lands and Settlement.
 The Commissioner of Customs.
 The Director of Public Works.
 The Director of Agriculture.
 The Surveyor General.
 The Senior Commissioner for the Coast.
 The Member for Mombasa.
 The Member for the Coast.
 The Member for Nairobi North.
 The Member for Nairobi South.
 The Member for Plateau South.
 The Member for Rift Valley.
 Sheikh Ali bin Salim.
 The Arab Member.

It is a very large Committee, Your Excellency, but it is recognised that large interests are concerned, and I may say that a considerable number of the names put forward are the names of Members who asked to be put on the Committee.

WATER BILL.

I beg further to move that the Water Bill be referred to a Select Committee consisting of:—

The Director of Public Works (Chairman).
 The Chief Native Commissioner.
 The Director of Agriculture.
 The Acting Commissioner for Local Government, Lands and Settlement.
 The Surveyor General.
 The Acting Attorney General.
 The Member for West Kenya.
 The Member for Nairobi South.
 The Member for Rift Valley.
 The Member for Kikuyu.
 The Member for the Lake.

THE HON. THE ACTING SOLICITOR-GENERAL: I beg to second the motion.

HIS EXCELLENCY: The question is that the Harbours Regulations Bill and the Water Bill be referred to the Select Committees named.

The question was put and carried.

NOTICE OF MOTION.

REPORT OF THE SELECT COMMITTEE ON THE LOCAL GOVERNMENT (MUNICIPALITIES) BILL.

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to give notice that at a later stage of the Session I shall move the adoption of the Report of the Select Committee on the Local Government (Municipalities) Bill.

The Council adjourned to 9.30 a.m. on Friday, the 24th August, 1928.

Report of the Select Committee on the Harbours Regulation Bill.

YOUR EXCELLENCY.

The Select Committee appointed by you to consider the Harbours Regulation Bill has the honour to submit its report as under.

The Committee took evidence from the representatives of the District Committee and the Conference Lines. It also had amongst its members representatives from the Harbour Advisory Board who gave evidence from the point of view of that Board. The Committee recommends that the following amendments be made to the Bill as it stands:—

CLAUSE 2.

That this clause be deleted and the following clauses be re-numbered accordingly.

OLD CLAUSE 3, NEW CLAUSE 2.

Definition of "Bridge."—That this definition be amended by the insertion of the word "fixed" between the word "any" and the word "structure" in line 15, and that the word "bank" which occurs in line 17 be deleted and the word "side" substituted therefor.

Definition of "Ferry."—That this definition be deleted and the following definition substituted therefor:—

"Ferry" means any floating vessel plying from one side of a waterway to another for the purpose of the carriage of passengers, animals, goods or vehicles.

Definition of "Harbours."—That this definition be deleted and the following substituted therefor:—

"Harbours" means and includes all the ports and harbours on the coast of the Colony of which the High Commissioner has or may in the future have the control, working or management, and all wharves, jetties, slips, docks and breakwaters, and the machinery, plant, tools and other property appertaining thereto.

OLD CLAUSE 5, NEW CLAUSE 4.

That this clause be amended by the insertion of the figure "(1)" after the figure "5" in line 15, and by the deletion of paragraphs (2) and that the following paragraphs be re-numbered accordingly, and by the adding of the letter "c" to the word "interest" in line 7 of sub-clause (1).

OLD CLAUSE 8, NEW CLAUSE 7.

That this clause be amended by the deletion of the words "3, 6 and 7" which occur in line 42, and the substitution thereof of the words "4, 5 and 6," and that a similar alteration be made in line 55.

OLD CLAUSE 9, NEW CLAUSE 8.

That the words "as defined in the Schedule to this Ordinance," which occur in lines 3 and 4, be deleted.

OLD CLAUSE 13, NEW CLAUSE 12.

That the words "in his discretion," which occur in line 50, be deleted, and that the words "to the High Commissioner," which occur at the end of sub-clause (a), be deleted.

OLD CLAUSE 15, NEW CLAUSE 14.

That this clause be amended by the deletion of the figures "15" in line 11 and the substitution thereof of the figures "12."

OLD CLAUSE 17, NEW CLAUSE 16.

That this clause be amended by the deletion of the words "13, 14 and 15" which occur in line 24, and the substitution thereof of the words "12, 13 and 14."

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OLD CLAUSE 23, NEW CLAUSE 22.

That the words "or for the loss of or damage to goods by vermin or insect pests" which occur at the end of sub-clause 1 (b), be deleted, and that a new paragraph to be numbered (c) be inserted to read as follows:—

"the loss of or damage to goods by vermin or insect pests except upon proof that such loss or damage arises from the negligence of his servants; or for"

and that the following paragraphs be re-numbered accordingly.

OLD CLAUSE 25, NEW CLAUSE 24.

That this clause be amended by the insertion of the following words between the word "ship" and the word "or" in line 12, "belonging to the High Commissioner," and by the insertion of the word "any" between the word "or" and the word "ship" in line 12.

OLD CLAUSE 26, NEW CLAUSE 25.

That this clause be amended by the insertion of the following words between the word "who" and the word "does" in line 32: "voluntarily and without lawful authority or excuse," and by the deletion of the word "wilfully" which occurs in paragraph (b), and by the deletion of the words "without lawful authority wilfully" which occur in paragraph (a), and by the deletion of the words "wilfully or without lawful excuse" which occur in paragraph (d), and by the insertion of the word "railway" between the word "quay" and the word "or" in line 49, and by the insertion of the words "to a fine not exceeding £500 or" between the word "liable" and the word "to" in line 51, and by the addition of the words "or of both such fine and imprisonment" after the words "ten years" in line 52.

OLD CLAUSE 28, NEW CLAUSE 27.

That this clause be deleted and the following clause substituted therefor:—

27. (1) If any person wilfully makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, such person shall be liable on conviction to a fine not exceeding £50, and in addition shall pay to the High Commissioner as penalty double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

(2) If any person negligently makes in any claim, return or particulars required by this Ordinance any statement which is untrue or incorrect in any particular, the High Commissioner may require such person to pay as penalty a sum not exceeding double the amount of the charges leviable under the Harbour Tariff on the goods in respect of which the untrue or incorrect statement has been made.

OLD CLAUSE 32, NEW CLAUSE 31.

That sub-clause 3 be amended by the deletion of the words "if a native or Arab" in line 9.

OLD CLAUSE 33, NEW CLAUSE 32.

That this clause be amended by the deletion of the word "twenty" which occurs in line 19, and the substitution of the words "one hundred," and by the deletion of the word "three" which occurs in line 20, and the substitution thereof of the word "twelve."

OLD CLAUSE 34, NEW CLAUSE 33.

That this clause be amended by the deletion of the words "servant or," which occur in line 35, and by the insertion of the words "or in the absence of a police officer by any servant" between the word "officer" and the word "or" in line 26, and by the deletion of the words "servant or" in line 26, and by the insertion of the words "or servant" between the word "officer" and the word "may" in line 27.

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And that this clause be further amended by the deletion of the words "24, 25, 26, 30 and 31," which occur in line 24, and the substitution thereof of the words "23, 24, 25, 29 and 30."

OLD CLAUSE 38, NEW CLAUSE 37.

That this clause be amended by the insertion of the words "rates or" between the word "of" and the word "taxes," which occur in line 14, and by the deletion of the words "any tax in aid of," which occur in line 18, and the substitution thereof of the words "any sum in respect of rates and taxes to," and by the deletion of the words "the tax," which occur in line 21, and the substitution of the words "such sums."

OLD CLAUSE 40, NEW CLAUSE 39.

That this clause be amended by the deletion of the words "18 or 19," which occur in line 8, and the substitution thereof of the words "17 or 18."

OLD CLAUSE 50, NEW CLAUSE 49.

That this clause be amended by the deletion of the words "or the approaches to the same," which occur at the end of sub-clause 14 thereof, and by the deletion of the words "notwithstanding anything contained in the Liquor Ordinance or in any Ordinance amending or repealing the same," in sub-clause 23; and by the deletion of the word "principal" in line 47 and the substitution of the word "port."

SCHEDULE.

That the Schedule be deleted.

We have the honour to be,

Your Excellency's obedient servants,

G. D. RHODES, *Chairman.*

*Acting General Manager of the
Kenya and Uganda Railways and
Harbours.*

T. D. H. BRUCE,

Acting Attorney General.

W. M. LOGAN,

*Acting Commissioner for Local
Government, Lands and Settlement.*

G. WALSH,

Commissioner of Customs.

H. L. SIKES,

Director of Public Works.

ALEX. HOLM,

Director of Agriculture.

A. G. BAKER,

Surgeon General.

O. F. WATKINS,

Senior Commissioner, Coast.

J. CUMMING,

Member for Mombasa.

R. W. B. ROBERTSON-EUSTACE,

Member for Cochet.

T. A. WOOD,

Member for Nairobi North.

T. J. O'SHEA,

Member for Plateau South.

ALI BIN SALIM,

Member for the Coast.

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