

1921

KENYA

30802

Governor Northey
Genf: 121

DATE
25th May 1921

21 June 1921

INCLOSURE:
No. 15. H. 2

SUBJECT 463

LAND AND AGRICULTURAL BANK.

encloses draft Bill to regulate management and control. Owing to present financial position of settlers considers it would be useless to start a Bank without a capital of £1,000,000 in sight. Requests assistance in obtaining a loan of this amount.

- Grindle.
- H. Bond. 17/6
- G. Fildes.
- Wood
- Churchill.

Previous Paper

MINUTES

21993/20.
Petition
on Soldier Settlers
Trans (Kisumu)

Sir H. Bead,

Desirable as this scheme is and valuable as it would have been for the settlers if now in working order, I can hardly imagine a more inopportune moment than the present for bringing it forward so far as raising the necessary capital is concerned. How in the world is the million pounds about which the Governor speaks to be raised in present circumstances? It is clear that neither the Treasury nor Crown Agents will lend it. Nor can I see any other source from which the money can be borrowed unless some South African capitalist is ready to lend it!

This should, I suppose, be brought up for discussion with Sir E. Northey when

he

Subsequent Paper

21993

the same in either case - if
£10,000,000 could not be made
available, the scheme was 464
case of self supporting
and will be with carrying out.

Further ^{considered} ~~agreed~~
financial arrangements
generally.

Recd
28.11

of more funds being on the
ground of the terms of any
It is not possible that this
should be a source of
funds for the Irish Railway,
it is necessary to rolling
stock on the railway
In 1912 it was not intended
it was agreed £9,000,000
programme

Mr. Kennedy

Investment Board for Ireland would like
to see papers. There is no
hope of providing for the rest of
the loan, if loan terms - and do
not see how we can make any
progress. If there were a chance
of ~~investing~~ must go again
(see his previous minute)

any amount
would be
available to
him, even if
available and

Mr. Patterson

464^B

A
I understand that
the S. O. B. has told
Sir J. Stevenson that the
letter & Dept. showed
discrepancy with Sir E. Portley
& then send up to him.

I have mentioned the
above in sending on the proposed
S. O. B.'s list of subjects,
but this should be in accordance
with the Dept. list &
the proposed accounts of
P. L. have & notes
accordingly. W. S.

2/17

30802
Recd
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25th May, 1921.

Sir,

With reference to Lord Milner's despatch No. 1074 of July 30th 1920, I have the honour to transmit herewith the draft of a Bill to regulate the management and control of a Land and Agricultural Bank for Kenya. This draft was compiled last October, but owing to pressure of work the Treasurer and Director of Agriculture were unable to give the matter the consideration it required.

2. As reported in my despatch No. 576⁵¹⁶ of April 14th, representations were made to me on my recent visit to the Trans Nzoia urging the necessity of immediately establishing a Land Bank and on my return to Nairobi I interviewed the Treasurer, Director of Agriculture, and Bank Managers with a view to seeing what could be done.

3. The world wide depression in trade has hit the producers in this Colony so hard during the last six months that the necessity for a Land Bank has become acute, and I fear that unless such a

Bank

THE RIGHT HONOURABLE

WINSTON CHURCHILL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.

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Bank can be established, many of them will be faced with bankruptcy.

4. The conditions which I observed on leaving Kenya in 1919 led me to discuss at the Colonial Office the possibility of establishing such a Bank and I then considered that a loan of some £200,000 from the West African Currency Board would enable a start to be made. It is now apparent that not only would such a sum be inadequate to meet demands and the apportionment would present difficulties, but the difference between interest charged at a reasonable rate on advances and the interest paid would be inadequate to meet the working expenses, which must include the salary of a fully competent manager.

5. The settlers in Kenya are now, for the most part, in such a precarious financial position that it behoves the Government to do all it can to assist them until the position improves and until they can get their produce to a profitable market. The market prices of their produce has fallen, and owing to the fixation of the Rupee at two shillings they have not benefitted by the relief which the fall in the sterling value of the Rupee would otherwise have brought them. Although the majority of the older settlers have already mortgaged their farms and would therefore not be able to obtain immediately further advances from the Land Bank, many of their existing advances could be taken over from the Banks and the periods for which the advances then extended, thus relieving the anxiety of the mortgagers as to possible foreclosure and setting free additional funds for the Banks to utilize for the relief of others. There are moreover a number

of Soldier Settlers who have not obtained full titles to their farms and who could only look to a Land Bank for financial assistance. On a careful examination of the requirements, I have come to the conclusion it would now be useless to start a Land Bank without a capital of one million pounds in sight.

6. I have therefore the honour to ask your most sympathetic assistance, through His Majesty's Treasury or the Crown Agents, in obtaining a loan of one million pounds at as low a rate of interest as possible to start a Land Bank for Kenya.

7. As indicated in Section 21 (1) of the Draft Bill, no advance is contemplated except on the first mortgage of land. It appears to meet the requirements of paragraph 2 of your despatch under reference.

I have the honour to be,

Sir,

Your humble, obedient servant,

Edward Watney

GOVERNOR.

A BILL
INTITULED
AN ORDINANCE TO ESTABLISH, AND TO REGULATE THE
MANAGEMENT AND CONTROL OF, A LAND AND AGRICULTURAL BANK
FOR THE COLONY OF KENYA AND THE EAST AFRICA PROTECTORATE.

Enacted by the Governor of the Colony of Kenya and the East Africa Protectorate with the advice and consent of the Legislative Council thereof:-

title.

1. This Ordinance may be cited as "The Land and Agricultural Bank Ordinance, 1920".

interpretation

2. In this Ordinance, unless inconsistent with the context:-

"Society" shall mean a society formed for the purpose of promoting agriculture or any agricultural or rural industry in the Colony of Kenya and the East Africa Protectorate -

(a) if all the members of the society are bona fide farmers residing in the Colony of Kenya or the East Africa Protectorate; and

(b) if all the members of the society are by law liable severally and in solido for the debts thereof; and

(c) if the objects and articles of association of the society are approved by the board;

"farmer" shall mean a person who devotes his attention to farming in the Colony of Kenya or the East Africa Protectorate, either exclusively or together with some profession, business, or other occupation;

468^A

"general manager" shall mean the general manager of the bank appointed under this Ordinance, or any person lawfully acting in that capacity;

"mortgagor" shall include any person or society to whom an advance has been made under this Ordinance, and his or its legal representatives;

"staff" shall mean the officers and clerks of the board appointed under Section 6 ;

"the board" shall mean the central board of the bank, constituted in accordance with Section 4 of this Ordinance;

"the bank" shall mean the Land and Agricultural Bank of the Colony of Kenya and the East Africa Protectorate as established under this Ordinance;

"this Ordinance" shall include the regulations made thereunder.

Establishment and Management of a Land and
Agricultural Bank.

3. (1) There shall be established in the Colony of Kenya and the East Africa Protectorate a bank under the name of "The Land and Agricultural Bank of Kenya", which shall be administered and managed as in this Ordinance or any amendment thereof is provided.

(2) The bank shall be a body corporate and shall, under the said name, be capable of suing and being sued and, subject to the provisions of Section 43, of purchasing or otherwise acquiring, holding, and alienating property, movable or immovable, and of doing or performing such acts and things as bodies corporate may by law do and perform, subject to the provisions of this Ordinance or any amendment thereof.

(3) The bank shall be deemed to have been established as from a date to be notified in the Gazette.

(4) As from the date referred to in subsection (3) all rights and remedies in relation to the recovery of any loan granted or advance made by the Government of the Colony and the Protectorate for the erection or construction or repair of any fence or dipping tank, or in relation to interest on or other charges in respect of any such loan or advance, shall so far as the same exist at the said date, be transferred to and vest in the bank, subject to all the terms and conditions upon which the loan or advance was made; and the sums so recovered, whether as repayment of capital amount or as interest or other charges shall form part of the funds of the bank.

Establishment
of Land and
Agricultural
Bank for the
Colony and
Protectorate.

Whenever in any law, regulation, contract, bond, deed or other document, rights or powers are conferred or duties or obligations imposed on or a reference is made to any such Government or any of its officers in respect of any such loan, advance, interest or charge, the same shall be construed as a power or duty conferred or imposed upon or a reference to the bank.

of opera-
the bank
yd.

4. (1) The operations of the bank shall be controlled by a central board consisting of a general manager and four other members each of whom shall be nominated by the Governor.

(2) Of the members of the board, other than the general manager, who are first nominated under this Ordinance, one shall retire annually in rotation. The dates of the retirement shall be the first day of January in the year 19 and in every year thereafter until all such members have retired. The members so retiring shall, unless they agree amongst themselves who shall retire, be determined by lot immediately after their first nomination, and the place of the member retiring shall be filled by nomination of another member in his place by the Governor. Thereafter one member of the board, not being the general manager, shall retire annually in rotation the order of retirement to be determined by the date of nomination. A retiring member may be re-nominated as a member of the board unless removed or disqualified as hereinafter provided.

(3) The name of every member of the board shall, within five days after his appointment or nomination, be laid upon the table of the Legislative Council if it be then in session, or if it be not then in session within five days after the commencement of its next ensuing session. Any person so appointed or nominated shall be removed if within one month after his name has been so laid before the Legislative Council, an address be presented by the Council to the Governor praying for the removal.

(4) No officer in the Government service, unless specially seconded from the Government service to be or act as a member, shall be a member of the board.

5. (1) The general manager shall be chief executive officer of the bank and shall preside at all meetings of the central bank, unless he has obtained leave of absence from the bank or is sick or is incapacitated by sickness or otherwise. In the absence of the general manager, the Governor may appoint a person to act as general manager during the period of his absence, and the person so acting shall discharge all the duties which the general manager is authorized to discharge or by any other law exercisable or to be performed by the general manager.

(3) In the event of the general manager being absent on duty he may, subject to the approval of the Governor, depute an officer of the bank to perform during his absence his duties other than those in connection with meetings of the central board and the officer so appointed shall, save as aforesaid, have the like powers and be subject to the same restrictions as are contained in this Ordinance relating to the general manager.

(4) Save as in the preceding subsections hereinbefore provided in the event of the absence for any cause of the general manager, the central board shall choose one of their members who shall during the absence of such general manager, act as chairman and preside at all meetings of the board.

A. (1) An officer who may from time to time, subject to the approval of the Governor, be appointed upon terms and conditions to be determined approved, such officers shall be authorized to act as necessary for conducting the business of the bank and may, subject to the like approval, be removed from office by the Governor.

The names of all persons so appointed, together with the name of the post held by, and the salary and other emoluments payable to, each of them shall, within five days after the commencement of every ordinary session of Legislative Council, be laid upon the Table thereof.

(2) Every person so appointed shall, subject to the provisions of this Ordinance, exercise the powers and functions and perform the duties assigned to him from time to time by the general manager.

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a administra-

7. The salaries and allowances of the general manager and of the staff and the persons employed by the bank and all other expenditure incurred by the bank shall be paid out of its funds.

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for purposes
Ordinance.

8. (1) Notwithstanding anything to the contrary contained in any law or regulation made under a law, all mortgages or documents of pledge or other securities, under this Ordinance, as well as deeds of transfer in favour of the bank executed for the purposes of or under this Ordinance may be prepared and executed by any officer of the bank specially appointed for the purpose by the bank, and any such officer may, with respect to such documents, perform the functions of a notary public or conveyancer. All such documents shall, if

registrable, be accepted for registration: Provided no such officer shall perform with respect to such documents, the functions of a notary public or conveyancer unless he is a person who is duly qualified as a Barrister or Solicitor and is a certified notary public: Provided further, anything to the contrary notwithstanding in any law that any person so qualified may render professional services as a whole time member of the staff for a fixed salary in lieu of professional fees.

(2) No stamp duty or transfer duty shall be payable in respect of any transfer of property to the bank.

9. Subject to the provisions of the last preceding section, all deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the bank if signed by the general manager, or other officer deputed thereto by the general manager, underneath the name of the bank and countersigned by one member of the central board. Provided that a cheque upon any banking account kept by the bank shall, if signed by the general manager and the accountant of the bank, or by other officers of the bank deputed thereto by the general manager, be deemed to be duly drawn though not countersigned by a member of the board.

10. Every member of the central board (other than the general manager or person appointed under Section 5 to act as such) shall be paid out of the funds of the bank a fee of three pounds for each day or portion of a day upon which he is engaged upon the business of the bank. Provided that no member shall be paid more than four hundred pounds in any one year. Every such member shall, in addition to those fees, and the general manager shall, in addition to his salary, be paid his reasonable expenses incurred for travelling and subsistence while engaged on the business of the bank. Such expenses shall be in accordance with a tariff framed by the central board and approved by the Governor and shall be paid out of the funds of the bank.

11. Three members shall constitute a quorum of any meeting of the central board, and all acts, matters or things authorized or required to be done by the board shall be decided by resolution of any meeting at which a

quorum

quorum is present: Provided that, when only three members of the central board are present, no advance shall be made except upon a unanimous resolution. The person acting as chairman of the central board at any meeting shall, in addition to his deliberative vote as a member of the board, have a casting vote.

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members.

12. No advance shall be made out of the funds of the bank to any member of the central board or of a local board nor to any member of the staff of the bank,

nor to any public officer who performs any work on behalf of the bank. And no such advance shall be made to any company or society in which any member of the central board or local board is directly or indirectly interested as director, manager, shareholder, or member other than as a member of a co-operative society: provided that nothing in this section contained shall be construed as preventing the deposit of money with any bank.

boards.

13. (1) The Governor may from time to time as he deems necessary, establish a local board for any area of the Colony or Protectorate, and appoint the members thereof. Every local board shall be subordinate to the central board.

(2) Every such local board shall consist of three persons, and the chairman of the board shall be appointed by the Governor.

(3) Every member of a local board shall, unless removed or disqualified, as hereinafter provided, hold office for two years and be eligible for reappointment.

(4) Two members shall constitute a quorum of a local board and all acts, matters and things authorised or required

required to be done by a local board shall be decided by a resolution of any meeting at which a quorum is present.

(5) Each member of a local board shall be paid out of the funds of the bank a fee of one pound for each day or portion of a day upon which he is engaged upon the business of the bank.

(6) Each such member shall, in addition to the said fees, be repaid reasonable expenses incurred for travelling and subsistence while engaged upon the business of the bank. Such expenses shall be in accordance with a tariff framed by the board and approved by the Governor, and shall be paid out of the funds of the bank.

(7) Every local board shall consider and transmit all applications submitted to it with its recommendations thereon to the central board, and generally shall advise the central board upon all matters as to which that board may require its advice.

(8) A local board shall have no executive functions, but shall act as agent for the central board.

(9) No member of the central board or of any local board shall at any meeting take part in the discussion of, or vote upon

(a) any application for an advance under this Ordinance by any person who is related to that member within the third degree of affinity or consanguinity;

(b) any such application by any person who is a debtor or creditor of that member, or in partnership with him, or in the employ of that member; or

(c) any such application by any person who is a debtor

debtor under a mortgage bond of any body of persons, whether incorporated or not, of which that member is a director or under which he holds any office or position other than that of auditor.

(2) Any person who contravenes any provision of this section shall be liable on conviction to a fine not exceeding two hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months, and the court before which he is convicted may order that he shall vacate his seat, and his seat shall thereupon become vacant.

15. (1) The Governor may, for incapacity or misbehaviour, remove any member of the central board or of a local board, from his office.

(2) A member of the central board or of a local board shall become disqualified to retain and shall ipso facto cease to hold his office as such member -

(a) if he becomes insolvent or assigns his estate for the benefit of his creditors, or make an arrangement with his creditors;

(b) if he become of unsound mind, or be convicted of an offence and sentenced to imprisonment therefor without the option of a fine;

(c) if he be absent from four consecutive meetings of the central board or a local board, without the leave of the board: Provided that no such leave shall be granted for a period covering more than six months within any period of twelve months;

(d) if he be or become a director of any other banking or money lending institution.

(3) If a member of the central board or of a local board be removed from or vacate his office under this section, or die, or resign before the expiry of the period for which he was appointed, his place shall be filled by the Governor and any person appointed to fill the place of any such member shall hold office for the remainder of the period for which such member would otherwise have held office.

ings of
board and
boards.

16. The central board shall meet once at least in every month and at such other times also as the general manager may summon it. The general manager shall summon a meeting of that board on the requisition in writing of two members. A local board shall not when summoned by the chairman thereof.

utes of
proceedings
meetings.

17. Minutes of the proceedings of every meeting of the central board, and of every local board, shall be regularly entered in books to be kept for the purpose, and the books shall be kept so as to show proper tabulated details of the business conducted or transacted at each meeting. The minutes of the proceedings of each such meeting shall be submitted at the next ensuing meeting and if then passed as correct, shall be confirmed by the signature of the person presiding thereat and shall, when so confirmed, be prima facie evidence in all courts and places that the proceedings as recorded in the minutes were proceedings of the first mentioned meeting. A local board shall keep such books and records of its transactions and correspondence as the central board may from time to time require. All such books and records shall be open at all reasonable times to inspection by the general manager or by a person deputed by him.

CHAPTER II.

The Business, the Purposes, and the Funds
of the Bank.

18. Subject to the provisions in this Ordinance specifically prescribed, the business of the bank shall be -

(a) ~~to advance money to farmers~~ to advance money on mortgage of land within the Colony or Protectorate;

(b) to advance money to, and to guarantee the performance of contracts by, co-operative societies;

(c) to advance money to farmers holding land under agreement of purchase from the Crown, or holding land from the Crown under a lease the unexpired period whereof is ten years or more,

and generally to make all such advances and do all such acts as the bank may, by this Ordinance or any other law, be authorised to make or do.

19. Advances may be made by the bank for all or any of the following purposes, namely, -

(a) improvements, in which term shall be included all improvements within the meaning of the 1st Schedule to the Crown Lands Ordinance, 1915;

(b) the discharge of existing liabilities on land or, in special circumstances, any other existing liabilities;

(c) the payment of costs incidental to the subdivision of land held in undivided shares;

(d) the establishment and promotion of agricultural industries;

(e) the purchase of land for any of the purposes described in paragraphs (a) and (d) of this section by a

person

person or group of persons whose financial resources are deemed adequate to carry on a purpose described in any of those paragraphs.

but no advance shall be made by the bank for the purpose of any such irrigation, water storage, or boring work as may be made the subject of a loan under any law relating to irrigation or conservation of water.

20. (1) The funds of the bank shall consist of-

(a) such moneys as the Governor by the advice and with the consent of the Legislative Council may from time to time by appropriation authorise the Treasurer to pay to the bank as part of its funds:

(b) the capital amounts recovered under subsection (4) of Section 3.

(2) The bank shall pay to the Treasurer interest upon the moneys which under this section form part of its funds. Such interest shall be payable half-yearly upon such dates as the Treasurer may from time to time direct. The rate of interest shall be

but may from time to time be added to or reduced by resolution of the Legislative Council: Provided that interest payable to the Treasurer under this sub-section in respect of the funds referred to in paragraphs (b) of subsection (1) shall not be at a higher rate than is recovered.

CHAPTER III.Various kinds of Advances and Securities.

21. (1) Save as in this Ordinance is specially provided, no advance shall be made except upon first mortgage of land within the Colony or Protectorate.

(2) No advance shall be made on any property which is already encumbered by any mortgage or charge (other than a mortgage or charge made under this Ordinance, or a charge which has been created under any law heretofore, now or hereafter in force, whereby loans have been erected, or dipping tanks and other appliances constructed at the cost of the Government) unless the advance be for the purpose of discharging a mortgage or charge of prior date.

The board shall in every case decide on the special facts whether an advance for the redemption of a prior mortgage or charge shall be sanctioned.

(3) No advance shall be made to any person who, or society which, is discovered, after the advance or any part thereof has been made, not to be or not to have been in the case of an individual, or in the case of a society, a co-operative society, shall entail any personal liability upon the board or any officer of the bank, but the board may refuse to pay any further instalments of the authorized advance, and may at once proceed to call in and recover hereinafter provided, the amount already advanced.

of
advances
accounts
...

22. (1) No advance shall be made to any person except -

(a) upon his written application in prescribed form; and

(b) upon a resolution of a duly constituted meeting of the board at which the question of making the advance is properly considered,

or until the bond or any other security which is proposed to be given to secure the advances has been registered as by law required or otherwise accepted.

(2) Every application for an advance shall state the purpose for which the advance is required, and shall be in a form prescribed by the central board..

(3) No advance shall be made for a sum less than fifty pounds except in special cases, and no advance shall be made to any one for a sum greater than one thousand pounds.

or for sums which in the aggregate exceed ^{pounds} one thousand/ except for the purpose of executing large agricultural works or improvements specially authorised by the Governor-in-Council: Provided that no sum advanced for any such works or improvements shall exceed in the aggregate the sum of £5000.

curities which
be taken.

23. (1) No advance shall be made upon the security of any unsurveyed land or plots situate within the limits of any municipality or township, provided that any unsurveyed land or plot may be accepted as collateral security, if it does not constitute the main part of the security.

(2) No advance on the sole security of land shall be made for an amount exceeding sixty per cent. of the fair agricultural or pastoral value of the land, together with the value of the improvements to be effected as determined by the board and no advance shall be made on the security of any land not permanently occupied and beneficially cultivated or stocked.

(3) No advance upon the security of Crown land the purchase price whereof is partly paid, shall exceed fifty per cent. of the amount already paid as part of the purchase price, but the board may advance an additional amount up to fifty per cent. on the value of improvements made since the agreement of purchase, and such value shall be determined by the board: Provided that, in the event of any such agreement being cancelled and the land resumed by the Crown, there shall be paid out of the General Revenue Fund of the Colony of Kenya and the Protectorate so much of the advance and the interest due thereon as the bank is unable to recover from the mortgagor.

(4) No advance shall be made upon the security of land held under lease ^{from the Crown unless the lease} be duly registered nor unless all covenants and conditions on the part of the lessee contained or implied in the lease have been, at the date of the application, complied with. No advance referred to in this sub-section shall exceed 25 per cent. of the value of the lessee's interest in the lease and such value shall be determined by the board: Provided that, in the event of the lease being cancelled and the land resumed by the Crown, there shall be repaid to the bank out of the General Revenue Fund of the Colony of Kenya and the Protectorate so much of any advance made upon the security of the lease and the interest due thereon as the bank is unable to recover from the mortgagor.

(5) For the purposes of this section it shall be in the discretion of the board to take into account the value of permanent improvements or of such standing or recurring crops as will last beyond the period for which the advance was made.

(6) An advance ~~made~~ made under sub-sections (3) and (4) of this section shall be secured in such manner and in such form as the board may prescribe and anything to the contrary notwithstanding contained in Section 24 any such advance shall, together with the interest thereon, be repaid within any period not exceeding five years and upon such terms as may be determined by the board.

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cash credits.

25. (1) In lieu of making any such advance as is subject to the provisions of Section 24 the board may grant a cash credit to an amount not exceeding one thousand pounds to any one farmer at any one time. Such farmer may from time to time draw against such credit such advances as he may require, and may from time to time make repayments on account of such advances provided that the amount owing by him to the bank and outstanding at any one time shall not exceed the amount of such credit. Such farmer shall pay interest to the bank at the rate of seven per cent per annum on the maximum monthly balance of the amount outstanding.

Nothing to the contrary notwithstanding in any law, the drawing of the whole or any part of such advance after the repayment of the whole or any part thereof, shall not be deemed to constitute a novation of the debt so long as the bond securing the advance remains unrevoked.

(2) Any bond to secure an advance under this section shall be in the form prescribed by the board and any such advance shall, together with the interest thereon, be repaid within five years from the date of the advance.

(3) Save as in this section is specially provided, an advance made under this section shall be subject to all the provisions of the Ordinance relating to advances upon first mortgage of immovable property.

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26. (1) Every application made for an advance under Sections 24 and 25 of this Ordinance shall be transmitted to the ^{Resident} magistrate or District Commissioner of the district in which is situate the greater part of the security proposed for the advance.

(2) Every such application shall be accompanied by a valuation of the property offered as security and the valuations shall be made by a valuator appointed by the bank.

(3) ^{Resident} The magistrate or District Commissioner receiving the application shall report as to the value of the said property, as to the character, ability, occupation and general suitability of the applicant and as to the advisability of making the advance. ^{Resident} The magistrate or District Commissioner shall transmit the application and his report to the bank.

ADVANCES TO CO-OPERATIVE SOCIETIES.

27. (1) A co-operative society may, upon written application made in the form prescribed by the central board, obtain from the bank on such conditions as the board may determine, an advance for any one or more of the objects which the society is legally competent to pursue. Such application, when signed by the chairman and secretary of the society, shall, if granted and to the extent to which it is granted, bind the society and all the members thereof, jointly and severally, for the repayment of any advance made by the bank in pursuance of such application.

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ve societies.

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

(3) The advance shall be made upon the joint and several liability of the members of the society, and upon such additional security as the board may require, and shall bear interest at the rate of seven per cent. per annum, payable periodically in advance, upon such dates as the board may prescribe. The advance shall be repayable, together with all interest due thereon, within ten years from the date thereof, unless the board extend the period of repayment or sooner call in the advance under Section 36.

(4) No advance made under this section shall exceed two thousand pounds sterling without the approval of the Governor-in-Council.

(5) Any bond to secure an advance under this section shall be in the form prescribed by the board.

23. An advance to a co-operative society may be made by the board in the form of a cash credit account, and the society may draw the whole or any part of the advance and may at any time repay the whole or any portion thereof. The society shall pay interest to the bank at the rate of seven per cent per annum on the maximum monthly balance of the amount outstanding.

guarantee by
board of con-
tracts of co-
operative
societies.

29. (1) The central board may guarantee the performance by a co-operative society of any contract entered into or to be entered into by that society, whether jointly with another society or otherwise, and in the event of the failure of any society to carry out the terms of the contract (so far as it is liable to do so) or to conduct the business which is the subject of the contract, to the satisfaction of the central board, the central board may complete the contract or abandon the same upon such terms as it is able to arrange and may recover from the society, which is so in default, any loss sustained by the bank in the same manner as an advance may be recovered from the society under this Ordinance.

(2) The central board may guarantee the performance by any society approved by the board and acting as agent of a co-operative society or society entered into or to be entered into by a partner society to the extent to which a co-operative society is interested in the performance thereof and in the event of the failure of any partner of society to carry out the contract so far as such partner or society is liable so to do, or to conduct the business of the contract to the satisfaction of the central board, the central board may complete the contract or abandon the same upon such terms as it may determine and may recover from every co-operative society on whose behalf the guarantee was given, its share of the loss sustained by the bank in the same manner as a loan may be recovered from the society under this Ordinance.

(3) Before giving any guarantee mentioned in this section the central board shall be satisfied that the members of the co-operative society or societies on whose behalf the guarantee is given are capable of themselves producing and supplying the article contracted to be supplied and shall obtain from the said society or societies an indemnity or indemnities for the full amount of the guarantee. Each society shall indemnify the bank to the extent of its interest in the contract. The indemnity shall be signed by the chairman and by the secretary of the society and when so signed shall bind all the members thereof jointly and severally.

(4) The society shall, in the case of a guarantee given after the commencement of this Act, pay to the bank a charge of one-eighth per cent of the amount guaranteed.

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

Members of
Society to
be liable.

31. Notwithstanding anything to the contrary contained in any law, every member of a co-operative society shall remain liable after his withdrawal from the society for every debt or obligation to the bank which was incurred by the society while he was a member thereof and was undischarged at the date of his said withdrawal until the board is satisfied that the society and its remaining members are capable of discharging the debt or obligation.

GENERAL PROVISIONS AS TO ADVANCES.

approved of
taken up
in three
months.

32. If any advance has been approved by the board and the application is made within three months after the date of the approval of the advance, the society shall be bound to advance the amount necessary to complete the security, and to register the same with the Registrar of Land Revenue, if the same is to be registered, and the board may withdraw its approval of the advance in that case, and the loan will be repaid with interest and all other liabilities shall be repaid.

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(1) In every mortgage deed to secure an advance made under this Ordinance there shall be included on the part of the mortgagor and in favour of the bank the covenants and conditions set out in the First Schedule to this Ordinance.

(2) All such covenants and conditions shall extend to and include the legal representatives of the mortgagor.

(3) The Governor may, on the recommendation of the central board, from time to time, by proclamation in the Gazette, alter any of such covenants and conditions, but no such proclamation shall affect any mortgage existing at the date of the first publication of the proclamation in the Gazette.

34. If -

(a) at any time any sum of money, whether principal or interest, due in respect of any advance made by the bank under this Ordinance be unpaid; or

(b) in the opinion of the central board, any such advance has not been applied for the purposes for which it was made or has not been carefully and economically expended; or

(c) the debtor become insolvent, or be sentenced to imprisonment without the option of a fine; or

(d) the debtor, being a co-operative society, has been placed in liquidation; or

(e) there be a breach of any other condition of the advance; or

(f) the advance be not applied within such time as the board may consider reasonable to the purpose for which it was made,

the central board may -

(1) refuse to pay any portion of the advance which has been approved, but not

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yet paid; and

(ii) three months after demand by registered letter has been made for repayment of the advance, and after due notice to the mortgagees and without recourse to a court of law enter upon and take possession of and sell by public auction the whole or any part of the security for the advance upon such terms and conditions as appears under all the circumstances to be just; and

(iii) transfer such land or other security to the purchaser and give a good and valid title thereto, notwithstanding that it may then be mortgaged or subject to a lien or charge in favour of some other person:

Provided that no such sale shall take place until the expiry of at least fourteen days from the date of a notice in the Gazette and in two newspapers circulating in the Colony of Kenya and the East Africa Protectorate stating the date, time, and place, and the terms and conditions of the sale.

35. (1) If the debtor be a co-operative society, the central board shall:-

(a) if any liability in respect of the advance be still due by the society to the bank, after realization of the assets of the society in the manner prescribed in the last preceding section, frame a plan of contribution, apportioning the debt in equal shares amongst all persons liable for the debts and obligations of the society;

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(b) cause that plan of contribution to be published by notice in the Gazette and in two newspapers circulating in the Colony of Kenya and the East Africa Protectorate. That notice shall state that if, within fourteen days from the date of publication thereof in the Gazette, the liability due to the bank in respect of the advance and interest thereon be not paid to the bank by each such person to the amount shown in the said plan of contribution, the central board will, without recourse to any court of law, seize and sell through its duly appointed agent (as it is authorised so to do), so much of the property and effects of each of the defaulting persons, as may be necessary to meet the liability of each such person as shown in the plan of contribution, together with any costs that may be incurred by the bank in connection with such seizure and sale.

(c) If any person liable to contribute under the plan of contribution has not paid his contribution, and has not, to the knowledge of the central board, property or effects sufficient to meet his liability, the central board may recover the rate from each of the other persons liable in manner aforesaid, the share of that person's unsatisfied liability. If any person liable to pay pro rata a share of another person's liability under this section be unable to pay the same, the other persons shall be liable to pay pro rata a further share to meet that liability.

liability, and such further share shall be recoverable from such other persons liable in manner aforesaid, and so on, until the whole liability to the bank be paid off.

(3) The central board in having recourse to the remedies provided by this section, shall in every case sell as aforesaid movable property before selling immovable property.

(4) Nothing in this section contained shall be construed as taking away or diminishing the right of any one debtor who has paid more than his pro rata share in satisfying his liability under this Ordinance, to proceed at common law against his principal debtor upon the joint and several liability aforesaid.

(5) For the purpose of this section "liability" includes, in addition to the advance and the interest thereon, the expenses incurred by the central board in making the advance and in recovering the same, with the interest thereon.

The central board shall apply the proceeds derived from any sale under the last preceding section in payment, in the first instance, of all moneys due in respect of the land or other security, and in redemption of any amount due to the bank including amounts due as expenses incurred by the central board in connection with the sale, and shall pay the balance (if any) to the person entitled to the same.

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CHAPTER IV.

Accounts.

33. The general manager shall, within two months after the thirty-first day of December in each year, cause to be laid before the Governor and the Treasurer to be laid before the Governor in the Gazette, a statement of accounts

showing the assets and liabilities of the bank as at the end of the year, and a profit and loss account for the year, together with a statement under headings of the receipts and payments during the same period.

Such statement shall be signed and corrected by the general manager, two members of the central board, the assistant of the bank, and shall be laid before the Legislative Council within seven days after it is submitted, if Legislative Council be then sitting; if Legislative Council be not then in session, it shall be laid within seven days after the commencement of its next session.

In addition to the accounts in this section the central board shall render to the Treasurer from time to time such other accounts, reports, and statements as the Treasurer may require.

The central board shall publish monthly in the Gazette a complete list of mortgages and securities accepted during the preceding month and such other information relative to such accounts, reports and statements at such times and in such manner as the Treasurer may require.

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39. The Treasurer or any officer in the public service deputed by him shall have full access to all the accounts, documents and papers in the bank, and the central board and every local board shall at all times furnish to him all such information as he may require.

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the bank.

40. (1) As soon as may be after the commencement of this Ordinance, the central board shall create a reserve fund, which shall be credited from time to time, subject to the provisions of section (4) of this section, any net profit earned by the bank.

(2) The reserve fund shall be applied by the central board in making good any loss or deficiency which may occur in any of the transactions of the bank.

(3) Whenever any balance remains in the reserve fund after providing for the loss or deficiency aforesaid, it may be devoted to any of the purposes to which any other funds of the bank may by this Ordinance or any amendment thereof be devoted.

(4) As soon as the reserve fund amounts to three hundred thousand pounds it shall be credited with the interest derived from the investment thereof and with no other amount, and the central board shall thereupon report the fact to the Treasurer, who shall as soon as may be thereafter lay the report before the Legislative Council. Upon the authority of resolutions of the Council such deductions may be made in the rate of interest payable upon advances under this Ordinance as from time to time may be found necessary in order to maintain the income of the bank as nearly as possible at the amount required to cover its working expenses and the interest payable under Section 20.

CHAPTER V

General and Miscellaneous.

in-Council
of Governor/
make regulations
recommendation
the board.

41. The Governor-in-Council may make, upon the recommendation of the central board, regulations, not inconsistent with this Ordinance, as to all or any of the following matters, namely,-

- (a) the meetings and proceedings of the central board and the local boards and the duties and functions of local boards and the manner of their performance;
 - (b) the rights and privileges and the duties of the staff and the duties of other persons employed by the board, and the manner of their performance;
 - (c) the establishment of agencies;
 - (d) the management of the bank and its agencies;
 - (e) the specific cases in which property given as security shall be insured;
 - (f) the rules of good husbandry;
 - (g) the conditions which may be imposed in regard to advances for improvements or new works, and the payment of such advances as work proceeds;
 - (h) the forms to be used and the books, accounts and records to be kept,
- and generally for fully and effectually carrying out and giving effect to the objects and purposes and for guarding against violations of this Ordinance.

42. (1) The board shall from time to time appoint a reasonable number of fit and proper persons in each district to inspect and value properties for the purposes of this Ordinance, and may in its discretion remove any person so appointed. The board shall cause notice of the appointment of such person to be published in the Gazette and in two newspapers circulating in the Colony of Kenya and the Provinces.

(2) The fees and travelling expenses of valuers so appointed shall be paid by the bank in accordance with tariffs framed by the board and approved by the Governor.

(3) Every valuer, administrative officer and police officer, shall receive additional emolument when required by the board in any case submitted to him and generally such as may be determined by the bank.

(4) The board shall, without fee or charge to the valuer, appoint a rating authority, and shall be the sole authority of every such authority, as regards the valuation of rateable property in respect of which the local authority has power to levy rates.

43. It shall not be lawful for any person to hold land other than is required for its business premises or is lawfully acquired as the result of foreclosure or otherwise on account of debt, and all land so temporarily required shall be sold at the earliest favourable opportunity upon such special terms and conditions as the board may approve. It shall not be lawful for the general manager, the members of the central board or any

any local board, or the members of the staff to buy directly or indirectly any land sold in accordance with this section.

44. (1) If the general manager, or any member of the staff or of the central board or of a local board, or any agent, inspector, or valuator, directly or indirectly, receive any fee or reward (other than is authorized under this Ordinance) from any person in respect of or in connection with an advance or application therefor, under this Ordinance, he shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds sterling or imprisonment with hard labour for a period not exceeding five years, or to both such fine and imprisonment.

(2) Any person who, in respect of or in connection with any advance or application therefor, under this Ordinance, bribes or attempts to bribe, or corruptly influences or attempts corruptly to influence the general manager, or any member of the central board or of a local board or of the staff, or an agent, inspector or valuator for the bank, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds sterling or imprisonment with hard labour for a period not exceeding five years, or to both such fine and imprisonment.

(3) Any person who,-

(a) having any pecuniary interest in any land offered as security for an advance under this Ordinance; or

(b) being a partner, creditor, or debtor of an applicant for an advance or being related to such an applicant within the third degree of affinity or consanguinity,

acts as a valuator in connection with the land offered as security for such advance, or sits at any meeting of the central board or of a local board and votes upon any resolution having reference to such land or advance, shall be liable to a penalty of not less than fifty pounds, and not exceeding two hundred pounds, which shall be recoverable by action in any competent court at the suit of the Treasurer, and, when recovered, shall be paid into the General Revenue Fund.

45. (1) Every applicant for an advance under this Ordinance shall pay to the bank in advance -

(a) fees in accordance with the scale set out in the Second Schedule to this Ordinance; and

(b) the valuator's fee and his travelling expenses, according to tariffs framed by the board and approved by the Governor.

In the event of the advance being refused, the applicant shall be entitled to a refund of fees paid by him, less an amount of Rs.5, and less the amount also of the valuator's fee and travelling expenses.

(2) The costs and fees of preparing, completing, or discharging any mortgage, pledge, or other security shall

shall be payable by the mortgagor or pledgor to the bank according to the scale set out in the Third Schedule to this Ordinance.

(3) The Governor may, from time to time, on the recommendation of the Board, alter or add to any such scale of costs or fees, and any alteration or addition shall be notified in the Gazette.

46. This Ordinance shall commence and come into operation on a date to be fixed by the Governor-in-Council by proclamation in the Gazette.

FIRST SCHEDULE

Covenants to be implied in every mortgage bond on the part of the person executing the same, or his legal representative, as a mortgagor in favour of the Land and Agricultural Bank, its successors and assigns as mortgagee.

(1) That the Mortgagor will pay the principal ^{due} mentioned in the mortgage bond, with interest thereon in accordance with the provisions of the Land and Agriculture Bank Act, 1920, and at the due dates thereof.

(2) That the mortgagor will from time to time so long as money remains owing on this security, well and substantially repair, and keep in good and substantial repair and condition, all buildings and other improvements erected and made upon the said land; and the bank may at all times be at liberty by itself, its agents or servants, to enter upon the said land to view and inspect the said buildings and improvements.

(3) That if the mortgagor fail or neglect to repair the said buildings and improvements or to keep them in good and substantial repair and condition as aforesaid, then and in any ~~such case~~ and as often as the same shall happen, it shall be lawful for, but not obligatory upon, the bank, at the cost and expense in all things of the mortgagor, to repair the said buildings and improvements and keep them in good and substantial repair and condition.

(4) That all moneys expended by the bank in and about repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in the insurance thereof or in attempting to exercise or enforce any power, right or remedy herein contained or implied, in favour of the bank, shall

shall be payable to the bank by the mortgagor on demand, and until paid shall be charged on the said land together with interest at the rate of not more than the rate prescribed for the time being under the said Ordinance, computed from the date or dates of such moneys being expended.

(5) Insurance shall be effected as may be prescribed by regulations or instruction of the board. Every policy of insurance so effected or renewed shall be ceded to the bank as collateral security.

(6) That the power of sale and incidental powers in that behalf conferred upon the bank under the Land and Agricultural Bank Ordinance, shall be implied herein and that they may be exercised and whenever the mortgagor makes default in the full and punctual payment of any instalment of interest or principal in accordance with the respective covenants for payment thereof herein contained, or if and whenever the mortgagor makes default in the faithful observance and performance of any other covenant or condition on his part herein contained or implied.

(7) That if and whenever the mortgagor makes any default as in the last preceding covenant mentioned, it shall be lawful for the bank to call up and compel payment of all principal, interest and other moneys for the time being owing under this security, notwithstanding that the time or times hereinbefore appointed for the payment thereof, respectively, may not have arrived.

(8) That the mortgagor will at all times cultivate and manage the lands mortgaged in a skillful and proper manner and according to the rules of good husbandry. Failure in

In the performance of this condition shall entail the immediate recovery of the advance should the bank so desire: Provided that this covenant shall not apply to land used exclusively for stock farming and described as such in the application for the advance.

(9) That this mortgage bond is subject to all the provisions of the Land and Agricultural Bank Ordinance, 1920, relating to mortgages under that Ordinance.

SECOND SCHEDULE.

Scale of Application Fees to be paid by Applicants in any event, and to accompany the application:-

	£	s.	d.
On application for an advance not exceeding £500	0	10	0
On application for an advance exceeding £500 and not exceeding £1,000	0	15	0
On application for an advance exceeding £1,000 and not exceeding £1,500	1	0	0
On application for an advance exceeding £1,500 and not exceeding £2,000	1	10	0
On application for an advance exceeding £2,000 and not exceeding £3,000	2	0	0
On application for an advance exceeding £3,000 for every £1,000 or fraction thereof	15	0	0

THIRD SCHEDULE.

Scale of Costs and Fees for preparing mortgage bond or pledge (to be deducted from the advance):

For every advance not exceeding £100	£ 0 10 0
For every advance exceeding £100 and not exceeding £500	1 0 0
For every advance exceeding £500 and not exceeding £1,000	1 10 0
For every advance exceeding £1,000 and not exceeding £1,500	2 0 0
For every advance exceeding £1,500 and not exceeding £2,000	2 10 0
For every advance exceeding £2,000 for every £1,000 or fraction thereof	1 0 0

With cash disbursements which are the same in every case, namely:-

Search fee	£ 0 2 0
Power of attorney to pass bond	0 5 0
Form of mortgage bond or document of pledge	0 2 0
Costs and fees for discharge or release of mortgage bond or pledge	1 1 0
Guarantees issued by the bank not relating to discharge or release of mortgages	0 5 0
All consents issued by the bank	0 5 0

26 Aug 1944

Sir,

I have the honor to refer to Sir Edward

DRAFT.

Kenya Capital
20/8

Mathias' Compt. Dept. No. 21 of the

25th of May, regarding the establishment

MINUTE.

- Mr. Clark 22/8/
- Mr. Parkin 27.8.44
- Mr. Butterfield 29/
- Mr. Grindle
- Mr. H. Lister
- Mr. H. ...
- Mr. G. Piddis
- Mr. Wood
- Mr. Churchill

forwarding with his observation.

the draft of a Bill to regulate the

management & control of a Land

Agricultural Board for Kenya.

(2) The ^{matter} ~~question~~ has been fully discussed with Sir Edward in

~~this country~~, and it is agreed that
this country, and as a result

of the discussion it was agreed that while
Bank is most
such a bank was desirable if funds
for its establishment could be found, but
that the borrowing power of the Colony ^{will be}
~~was~~ already strained to the utmost to provide
in connection with the general
for the objects already approved and that
it ^{is} ~~was~~ impossible ^{in present times} to borrow ^{further} ~~more~~ for this

purpose. ^{should}
~~The question could however,~~
~~be the object of the~~

~~be considered, if in the event of an~~
~~economic crisis arising, the matter can be of any~~
~~importance in the financial situation. ^{there}~~

~~of the Colony, a sub-committee prepared~~
~~to give the fullest amount of~~
~~preparation for the formation of a~~

~~Committee~~